Nos. 4748, 4749, 4750

United States

Circuit Court of Appeals

For the Ninth Circuit.

No. 4748.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,
Appellant,

vs.

ROSENBERG BROTHERS & COMPANY,
Appellee.

No. 4749.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,
Appellant,

vs.

CALIFORNIA WINE ASSOCIATION, a Corporation,
Appellee.

No. 4750.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,
Appellant,

vs.

S. L. JONES & COMPANY, a Corporation,
Appellee.

Apostles on Appeals.

BOOK OF EXHIBITS.

Upon Appeals from the Southern Division of the United States District Court for the Northern District of California, Third Division.

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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United States Circuit Court of Appeals for the Ninth Circuit.

No. 4748.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

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UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Appellant,

vs.

CALIFORNIA WINE ASSOCIATION, a Corporation,

Appellee.

No. 4750.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Appellant,

vs.

S. L. JONES & COMPANY, a Corporation,

Appellee.

STIPULATION RE REPRODUCTION OF EXHIBITS, ETC.

IT IS HEREBY STIPULATED by and between the proctors for the appellant and appellees in the above-entitled matter that all of the exhibits introduced in evidence in the District Court of the United States for the Northern District of California, Southern Division, in the above cases, and sent up to the above-entitled court in their original form, may be printed or photostated in a separate volume, to be known as Apostles on Appeal "Volume of Exhibits," with the exception of the hereinafter specifically designated exhibits or parts of exhibits, as agreed upon by the respective parties, and marked on the said original exhibits in the office of the Clerk of the above court.

That as to these latter exhibits, it is hereby stipulated and agreed that they may be brought to the attention of the above court in their original form and need not be printed or photostated.

The exhibits hereinabove referred to and which it is the intention of the above parties to have printed or photostated and included in said volume are as follows:

"LIBELANTS' EXHIBITS.

No. 3. Mine warnings—57.
No. 4. Mine warnings—63.
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No. 6. Mine warnings—65.

No. 7. Suppt. to Pilot Chart—1919.
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No. 9. Letter, Feb. 24, 1922.
No. 10. File of advertisements in 'Seattle Daily Index.'
No. 11. List of Steamships.
No. 12. Letter—Nov. 25, 1919.
No. 13. Bill of Lading—Isthmian, S. S. L.
No. 14. Bill of Lading—Holland-American Line.
No. 15. Bill of Lading—Harrison Line.
No. 16. Bill of Lading—United Am. Lines.
No. 17. Bill of Lading—French Line.
No. 18. Stip. as to ads in 'Guide.'
No. 19. Photostat—'Guide'—June 23, 1919.
No. 20. Photostat—'Guide'—July 17, 1919.
No. 20.—Smith's 'Stowage Plan.'
No. 22. Jory's 'Stowage Plan.'

RESPONDENT'S EXHIBITS.

A. Copy 'Guide' Jan. 5, 1920.
B. 'Daily Coml. News,' Jan. 2, 1920.
C. Manifest,—Voy. 51.
D. Copy 'Guide'—Dec. 29, 1924.
E. Surveyor's Certf.—Jan. 6, 1920.
F. Stowage Plan 'West Aleta.'
G. Manifest—SS. 'Effingham.'
H. Bill of Lading—Canadian Gov. M. M.
I. Letter—Cal. Wine—Dec. 16, 1919.
J. Letter—Rosenberg, Dec. 8, 1919.
K. Letter—Rosenberg, Dec. 10, 1919.
L. Application for Ins. Letter Jan. 23, 1920.

M. Bill of Lading, Jan. 2, 1920, S. L. Jones & Co.
N. Letter, Rosenberg Bros., 12/4/19.
O. Letter, Dec. 10, 1919."

The exhibits which it is intended shall not be printed or photostated, and shall be presented to the Court in their original form, are as follows:

"LIBELANTS' EXHIBITS.

No. 1. Agreed Statement of Facts.
No. 2. Map of the North Sea.

EDWARD J. McCUTCHEN,
J. M. MANNON, Jr.,
FARNHAM P. GRIFFITHS,
Proctors for Appellees.
IRA S. LILLICK,
CHALMERS S. GRAHAM,
Proctors for Appellant.

[Endorsed]: No. 4748. Stipulation Re Reproduction of Exhibits, etc. Filed Jan. 29, 1926. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

LIBELANT'S EXHIBIT No. 3.
NAVY DEPARTMENT.
U. S. HYDROGRAPHIC OFFICE.
Washington, D. C.
MINE WARNINGS TO MARINERS.
No. 57. December 10, 1919.

The following which is the latest information that has been received by the Hydrographic Office is taken from Mine Warnings to Mariners Nos. 301, 305, 306, and 310 issued by the British Admiralty,

London, England, and cancels "Mine Warnings to Mariners" Nos. 42, 49, and 51 issued by the Hydrographic Office under dates of October 1, and November 3 and 11, 1919, relating to Areas Nos. 1, 2, 3, 4, and 5 of the North Sea. Authority: International Mine Clearance Committee:

North Sea.

1. Mariners are hereby informed that in the North Sea Zone described below navigation is unrestricted except as laid down in Sections 2 and 3 of this Warning.

Bounded on the north by the parallel of lat. 61° N.; on the east and south by the Scandinavian coast to the meridian of lon. 9° E., thence by that meridian to the coast of Denmark, and thence by the northwest European coast as far as Boulogne, and thence by the line joining Boulogne and Dungeness, and on the west by the east and north coasts of Great Britian as far as Cape Wrath; thence by the meridian of lon. 5° W.

2. Mine Fields.

(A) Helgoland Bight.

Except as hereinafter provided ships are to avoid the area bounded as follows:

(1) On the north by a line passing through the following positions: Lat. 56° 12′ N., lon. 5°30′ E.; lat. 56° 12′ N., lon. 7°′ E.; and lat. 56°′ N.; lon. 7° 48′ E.

(2) On the east by a line passing through the following positions: Lat. 56°′ N., lon. 7° 48′ E.; lat. 55° 42′ N., lon. 7° 48′ E.; lat. 55° 42′ N., lon. 7° 45′ E.; lat. 55° 36′ No., lon. 7° 45′ E.; lat. 55° 36′ N.; lon. 7° 40′ E.; lat. 55° 34′ N., lon. 7° 40′ E.; lat. 55° 27′

30″ N., lon. 8° 05′ E.; lat. 55° 20′ N., lon. 8° 05′ E.; lat. 55° 20′ N., lon. 7° 57′ E.; lat. 55° 10′ N., lon. 7° 57′ E.; lat. 55° 10′ N.; lon. 7° 30′ E.; lat. 54° 55′ N.; lon. 7° 30′ E.; lat. 54° 41′ N.; lon. 7° E.; lat. 54° 24′ N., lon. 6° 50′ E; lat. 54° 24′ N., lon. 5° 50′ E.; and lat. 53° 31′ N., lon. 5° 50′ E.

(3) On the south by a line drawn parallel to the low water mark and 3 miles from it from lat. 53° 31′ N.; lon. 5° 50′ E.; to lat. 53° 28′ 30″ N., lon. 5° 21′ E., and thence by a line passing through the following positions: Lat. 53° 28′ N., lon. 5° 21′ E.; lat. 53° 29′ N., lon. 5° 20′ E.; lat. 53° 28′ N., lon. 5° 17′ E.; lat. 53° 28′ N., lon. 5° 15′ E.; lat. 53° 28′ N. 30″ N., lon. 5° 15′ E.; lat. 53° 28′ N., lon. 5° 07′ E.; lat. 53° 26′ N., lon. 5° E.; lat. 53° 54′ N., lon. 5° E.; lat. 53° 54′ N., lon. 4° 56′ 30″ E.; and lat. 53° 26′ N., lon. 4° 02′ E.

(4) On the west by a line passing through the following positions: Lat. 53° 26′ N., lon. 4° 02′ E.; lat. 53° 35′ N.; lon. 3° 58′ E.; lat. 54° N., lon. 4° 04′ E.; lat. 54° 34′ N., lon. 4° 19′ E.; lat. 54° 53′ N., lon. 5° E.; lat. 54° 57′ N., lon. 4° 29′ 30″ E.; lat. 55° 02′ N., lon. 4° 22′ E.; lat. 55° 48′ N., lon. 4° 53′ E.; and lat. 56° 12′ N., lon. 5° 30′ E.

(D) Caution.

Vessels are cautioned against anchoring, except in cases of emergency, submarines should not dive, and trawling is prohibited in certain areas where it is possible that sunken mines may still be lying on the bottom.

For limits of these areas see British Admiralty Notices to Mariners, and the Hydrographic Office Notice to Mariners.

3. Routes.

(A) All the waters in the North Sea Zone are open to surface navigation with the exception of the areas described in Section 2 of this Warning. The following routes are also open:

(B) Helgoland Bight Channel.

A channel has been swept, the center line of which passes through the following positions: Lat. 54° 49′ 30″ N., lon. 4° 20′ E.; lat. 55° 09′ N., lon. 5° 49′ E.; lat. 54° 54′ N., lon. 6° 10′ E.; and lat. 54° 39′ 30″ N., lon. 6° 59′ E. This channel is 10 miles wide, 5 miles either side of the center line between Dogger Bank Zuid Light Vessel and No. 5 light buoy. Between Nos. 5 and 3 light buoys it is 5½ miles wide, 1½ miles on the south side of the center line and 4 miles on the north side. For positions of light buoys see Section 4 of Sub-section (C) of this Warning. It should be noted that some of these marks are not now in the center line of the channel. The channel as described above should be followed and not the line of the marks.

(Continued)

Sheet No. 2 of No. 57 December 10, 1919

North Sea (Continued).

(C) Borkum Reef to Haaks Channel.

A channel 12 miles wide, 6 miles on either side of the center line which passes through the following positions has been open to navigation: Lat. 53° 48′ N., lon. 5° 50′ E.; lat. 53° 48′ N., lon. 5° E.; and lat. 53° 19′ 30″ N., lon. 4° 06′ E.

(D) Jutland Coastal Route.

A route has now been buoyed along the Jutland Coast through Danish territorial waters, and

through Soren Bovbjergs Dyb. This route is only intended for use during daylight and can be used by vessels drawing up to 18½ feet of water. The lights on the light buoys and the temporary lights on Bjergehuse, Havrvig, and Kjoergaarde Beacons, will however, be exhibited. Bjergehuse Beacon exhibits a temporary fixed white light visible 12 miles between the bearings 35° (N. 46° E. Mag.) and 145° (S. 24° E. Mag).

Havrvig Beacon exhibits a temporary fixed green light visible 7 miles between the bearings 35° (N. 46° E. Mag.) and 145° (S. 24° E. Mag.).

Kjoergaarde Beacon exhibits a temporary fixed red light visible 9 miles between the bearings 41° (N. 52° E. Mag.) and 151° (S. 18° E. Mag.).

Pilots for Esbjerg will meet incoming vessels in the fairway north of Soren Bovbjergs Dyb.

For positions and descriptions of light buoys and buoys see Section 4, Sub-section (E) of this Warning. The main and auxiliary channels at Nordmans Tief are clear of moored mines.

(F) Northern Approach to the Scheldt.

Vessels bound from the Northward to ports in the River Scheldt should pass to the eastward of the Schouwen Bank Light and Whistle Buoy and the Noord Steen Bank Light Buoy. From thence they should steer to pass as close as possible to the South Banjaard Light Buoy and to the Kaloo Bank Light and Whistle Buoy and then proceed through the east Gat to the Scheldt.

NOTE.—Vessels passing to the westward of the South Banjaard Light Buoy and the Kaloo Bank Light and Whistle Buoy should pass as close as

possible to those buoys owing to the existence of a line of moored mines near the edge of the Northern approaches to the Straits of Dover Mine Field.

Belgian and Dutch Pilot Vessels cruise in the vicinity of lat. 51°50′ N., lon. 3°28′E., and off the entrance to Brouwershaven Gat.

4. Light Vessels and Light Buoys.

(A) Helgoland Bight Mine Field (Western Side).

The following light vessels and light buoys have been established off the western edge of the Helgoland Bight Mine Field:

(a) Dogger Bank Noord Light Vessel, exhibiting a flashing white light every 15 seconds in lat. 56°N., lon. 5°E.; fog siren every 30 seconds.

(b) No. 1 red conical light and whistle buoy exhibiting an occulting white light every 10 seconds in lat. 55°39′30″N., long. 4°45′E.

(c) No. 2 black conical light and whistle buoy exhibiting an occulting white light every 10 seconds in lat. 55°22′30″N., lon. 4°29′E.

(d) No. 3 red conical light and whistle buoy exhibiting an occulting white light every 10 seconds in lat. 55°39′30″N., lon. 4°29′E.

(e) Dogger Bank Zuid Light Vessel, exhibiting a group flashing white light showing two flashes every 15 seconds in lat. 54°45′N., lon. 3°58′30″E.; fog siren, two blasts every 2 minutes.

(f) No. 4 black conical light and whistle buoy exhibiting an occulting white light every 10 seconds in lat. 54°20′N., lon. 3°56′E.

(g) No. 5 red conical light and whistle buoy exhibiting an occulting white light every 10 seconds in lat. 53°54′N., lon. 3°54′E.

(h) No. 5A black can light and whistle buoy exhibiting an occulting white light every 10 seconds in lat. 3°29′N., lon. 3°52′E.

(B) Helgoland Bight Mine Field (Eastern Side).

The following light buoys have been established on the eastern edge of the Helgoland Bight Mine Field:

(a) A light buoy marked "F. 2." exhibiting a group flashing white light showing two flashes every 12 seconds in lat. 55°10′ N., lon. 7°30′ E.

(b) A black light buoy marked "F. 1" exhibiting a group flashing white light showing two flashes every 12 seconds in lat. 54°55′ N., lon. 7°30′ E.

(c) A light and whistle buoy marked "F. 3" exhibiting a group flashing white light showing two flashes every 12 seconds in lat. 54°24′N., lon. 6°50′ E.

(d) A light and whistle buoy marked "F. 4" exhibiting a group flashing white light showing two flashes every 12 seconds in lat. 54°24′ N., lon. 5° 50′ E.

(e) A black light buoy exhibiting a group flashing white light showing four flashes every 18 seconds in lat. 53°48′42″ N., lon. 7°13′18″ E.

(Continued)

Sheet No. 3 of No. 57. December 10, 1919

North Sea (Continued)

NOTE.—This light buoy will remain in position until the Norderney Light Vessel is replaced on her peace time position.

(C) Helgoland Bight Channel.

The following light buoys have been established on the Helgoland Bight Route:

(a) No. 2 black light buoy exhibiting a group flashing white light showing two flashes every 18 seconds in (approximately) lat. 54°33′30″ N., lon. 7° 23′30″E.

(b) No. 3 black light buoy exhibiting a group occulting white light showing two eclipses every 12 seconds in (approximately) lat. 54°41′N., lon. 7°E.

NOTE.—At a distance of 110 yards westward of No. 3 light buoy and whistle buoy No. 3A has been established exhibiting a group occulting red light having two eclipses every 12 seconds.

(c) No. 4 black light buoy exhibiting a flashing white light every 7½ seconds in (approximately) lat. 54°49′30″ N., lon. 6°30′ E.

(d) No. 5 black light buoy exhibiting a group flashing white light showing two flashes, every 12 seconds, in (approximately) lat. 54°55′30″ N., lon. 6°18′ E.

(e) No. 5A black light and whistle buoy exhibiting a flashing white light every 7½ seconds in lat. 55°09′18″ N., lon. 5°49′30″ E.

(f) No. 6 black light buoy exhibiting a group flashing white light showing four flashes every 18 seconds in (approximately) lat. 55° N., lon. 5° 10′E.

(g) No. 7 black light buoy exhibiting a flashing white light every 7½ seconds in (approximately) lat. 54° 53′ 30″ N., lon. 4° 35′ E.

NOTE.—Several reports have been received that the positions of the above marks are unreliable

and in some cases that the light buoys were extinguished. The last report stated that all lights were burning.

(D) Borkum Reef to Haaks Channel.

The following light vessels and light buoys have been established on the Borkum Reef to Haaks Channel:

(1) Wester Emms Sud Light Vessel has been withdrawn and Borkum Reef Light Vessel will be replaced on her peace time station in lat. 53° 46′ N. lon. 6° 04′ E.

(2) A black light and whistle buoy marked "A" exhibiting an occulting white light every 8 seconds in lat. 53° 48′ N., lon. 5° 50 E.

(3) A black light and whistle buoy marked "B" exhibiting a group flashing white light showing four flashes every 18 seconds in lat. 53° 48′ 42″ N., lon. 5° 34′ 12″ E.

(4) A black light and whistle buoy marked "C" exhibiting a group flashing white light showing two flashes every 18 seconds in lat. 53° 49′ 06″ N., lon. 5° 16′ 30″ E.

(5) Norderney Light Vessel exhibiting a fixed white light in lat. 53° 49′ N., lon. 5° E. Near the light vessel is a watch buoy.

(6) A black light and whistle buoy marked "D" exhibiting a flashing white light every 7½ seconds in (approximately) lat. 53° 41′ N., lon. 4° 47′ E.

(7) A black light and whistle buoy marked "E" exhibiting an occulting white light every 8 seconds in (approximately) lat. 53° 34′ 30″ N., lon. 4° 34′ E.

(8) A black light and bell buoy marked "F" exhibiting a group flashing white light showing

four flashes every 18 seconds in (approximately) lat. 53° 28′ N., lon. 4° 21′ 30″ E.

(9) A black light and whistle buoy marked "G" exhibiting a group flashing white light showing two flashes every 18 seconds in (approximately) lat. 53° 21′ N., lon. 4° 08′ 30″ E.

(E) Jutland Coastal Route.

The following light buoys and buoys have been established on the Jutland Coastal Route:

(1) A black staff with one ball over one cone point upwards in lat. 56° 22′ 24″ N., lon. 8° 01′ 42″ E.

(2) A black staff with two cones points upwards in lat. 56° 15′ 36″ N., lon. 8° 02′ 15″ E.

(3) A black staff with one ball in lat. 56° 07′ 45″ N., lon. 8° 01′ 20″ E.

(4) A black staff with one cone point downward in lat. 55° 59′ 15″ N., lon. 8° 02′ 36″ E.

(5) A black staff with two cones points downwards in lat. 55° 53′ 58″ N., lon. 8° 04′ 18″ E.

(6) A black staff with one ball in lat. 55° 48′ 41″ N., lon. 8° 05′ 12″ E.

(7) A black staff with one cone point upwards in lat. 55° 41′ 32″ N., lon. 8° 03′ 45″ E.

(8) A white can buoy with three down turned brooms in lat. 55° 36′ 20″ N., lon. 8° 01′ 30″ E.

(9) A red light and whistle buoy exhibiting a flashing white light every 15 seconds in lat. 55° 35′ 19″ N., lon. 8° E.

(10) A red conical buoy with three upturned brooms in lat. 55° 34′ 20″ N., lon. 7° 57′ 36″ E.

(11) A red conical buoy with one upturned broom in lat. 55° 32′ 40″ N., lon. 7° 55′ 40″ E.

(12) A red and white horizontally striped light and whistle buoy exhibiting an occulting red light every 7 seconds in lat. 55° 31′ 24″ N., lon. 7° 56′ 06″ E. (Soren Bovbjergs Dyd Sud).

(13) A red conical buoy with two upturned brooms in lat. 55° 31′ 18″ N., lon. 7° 57′ 34″ E.

(Continued)

Sheet No. 4 of No. 57. December 10, 1919

North Sea (Continued)

(14) A green wreck buoy with two flags lying to the northeastward of the wreck in lat. 55° 30′ 55″ N., lon. 7° 58′ 17″ E.

(15) A red conical buoy with three upturned brooms in lat. 55° 30′ 31″ N., lon. 7° 59′ 03″ E.

(16) The Cancer Light and Whistle Buoy painted red, in lat. 55° 29′ 27″ N., lon. 8° 02′ 02″ E., exhibiting a flashing white light every 15 seconds.

(17) A white can buoy with two down turned brooms in lat. 55° 32′ 10″ N., lon. 7° 56′ 45″ E.

(18) A white can buoy with one down turned broom in lat. 55° 31′ 18″ N., lon. 7° 58′ 14″ E.

(19) A white can buoy with three down turned brooms in lat. 55° 30′ 48″ N., lon. 7° 59′ 30″ E.

E. SIMPSON,

Rear Admiral, U. S. Navy Hydrographer.

[Endorsed]: United States District Court. No. 17,692. Libelant's Exhibit No. 3. Mine Warnings to Mariners.

No. 4748. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jan. 4, 1926. F. D. Monckton, Clerk.

LIBELANT'S EXHIBIT No. 4.

NAVY DEPARTMENT.

U. S. HYDROGRAPHIC OFFICE.

Washington, D. C.

MINE WARNINGS TO MARINERS.

No. 63. January 6, 1920.

The following which is the latest information that has been received by the Hydrographic Office is taken from Mine Warnings to Mariners No. 321 issued by the British Admiralty, London, England, and cancels "Mine Warnings to Mariners" Nos. 57 and 59 issued by the Hydrographic Office under dates of December 10 and 22, 1919, relating to the North Sea. Authority: International Mine Clearance Committee:

North Sea.

1. Mariners are hereby informed that in the North Sea Zone described below navigation is unrestricted except as laid down in Sections 2 and 3 of this Warning.

Bounded on the north by the parallel of lat. 61° N.; on the east and south by the Scandinavian coast to the meridian of lon. 9° E., thence by that meridian to the coast of Denmark, and thence by the northwest European coast as far as Boulogne, and thence by the line joining Boulogne and Dungeness, and on the west by the east and north coasts of Great Britain as far as Cape Wrath; thence by the meridian of lon. 5° W.

2. Mine Fields.

(A) Helgoland Bight.

Except as hereinafter provided ships are to avoid the area bounded as follows:

(1) On the north by a line passing through the following positions: Lat. 56° 12′ N., lon. 5° 30′ E.; lat. 56° 12′ N., lon. 7° E.; and lat. 56° N., lon. 7° 48′ E.

(2) On the east by a line passing through the following positions: Lat. 56° N., lon. 7° 48′ E.; lat. 55° 42′ N., lon. 7 ° 48′ E.; lat. 55° 42′ N., lon. 7° 45′ E.; lat. 55° 36′ N., lon. 7° 45′ E.; lat. 55° 36′ N., lon. 7° 40′ E.; lat. 55° 34′ N., lon. 7° 40′ E.; lat. 55° 27′ 30″ N., lon. 8° 05′ E.; lat. 55° 20′ N., lon. 8° 05′ E.; lat. 55° 20′ N., lon. 7° 57′ E.; lat. 55° 10′ N., lon. 7° 57′ E., lat. 55° 10′ N., lon. 7° 30′ E.; lat. 54° 55′ N., lon. 7° 30′ E.; lat. 54° 41′ N., lon. 7° E.; lat. 54° 24′ N., lon. 6° 50′ E.; lat. 54° 24′ N., lon. 5° 50′ E.; and lat. 53° 31′ N., lon. 5° 50′ E.

(3) On the south by a line drawn parallel to the low water mark and 3 miles from it from lat. 53° 31′ N., lon. 5° 50′ E., to lat. 53° 28′ 30″ N., lon. 5° 21′ E., and thence by a line passing through the following positions: Lat. 53° 28′ N., lon. 5° 21′ E.; lat. 53° 29′ N., lon. 5° 20′ E.; lat. 53° 28′ N., lon. 5° 17′ E.; lat. 53° 28′ N., lon. 5° 15′ E.; lat. 53° 28′ 30″ N., lon. 5° 15′ E.; lat. 53° 28′ N., lon. 5° 07′ E.; lat. 53° 26′ N., lon. 5° E.; lat. 53° 54′ N., lon. 5° E.; and lat. 53° 54′ N., lon. 4° 03′ E.

(4) On the west by a line passing through the following positions: Lat. 53° 54′ N., lon. 4° 03′ E.;

lat. 54° N., lon. 4° 04′ E.; lat. 54° 34′ N., lon. 4° 19′ E.; lat. 54° 53′ N., lon. 5° E.; lat. 54° 57′ N., lon. 4° 29′ 30″ E.; lat. 55° 02′ N., lon. 4° 22′ E.; lat. 55° 48′ N., lon. 4° 53′ E.; and lat. 56° 12′ N., lon. 5° 30′ E.

(B) Caution.

Vessels are cautioned against anchoring, except in cases of emergency, submarines should not dive, and trawling is prohibited in certain areas where it is possible that sunken mines may still be lying on the bottom.

For limits of these areas see British Admiralty Notices to Mariners, and the Hydrographic Office Notice to Mariners.

3. Routes.

(A) All the waters in the North Sea Zone are open to surface navigation with the exception of the areas described in Section 2 of this Warning. The following routes are also open:

(B) Helgoland Bight Channel.

A channel has been swept, the center line of which passes through the following positions: Lat. 54° 49′ 30″ N., lon. 4° 20′ E.; lat. 55° 09′ N., lon. 5° 49′ E.; lat. 54° 54′ N., lon. 6° 10′ E.; and lat. 54° 39′ 30″ N., lon. 6° 59′ E. This channel is 10 miles wide, 5 miles on either side of the center line between Dogger Bank Zuid Light Vessel and No. 5 light buoy. Between Nos. 5 and 3 (Continued)

light buoys it is 5½ miles wide, 1½ miles on the south side of the center line and 4 miles on the north side. For positions of light buoys see Section 4 of

Subsection (C) of this Warning. It should be noted that some of these marks are not now in the center line of the channel. The channel as described above should be followed and not the line of the marks.

(C) Borkum Reef to Haaks Channel.

A channel 12 miles wide, through the mine field described in Section 2 sub-section A has been opened to navigation. The northern boundary of this channel is the parallel of lat. 53° 54′ N. and the southern boundary is a line joining the following positions. (a) Lat. 53° 42′ N., lon. 5° 50′ E.; (b) lat. 53° 42′ N., lon. 5° 04′ E.; and (c) lat. 53° 40′ N., lon. 5° E.

(D) Jutland Coastal Route.

A route has now been buoyed along the Jutland Coast, through Danish territorial waters, and through Soren Bovbjergs Dyb. This route is only intended for use during daylight and can be used by vessels drawing up to 18½ feet of water. The lights on the light buoys and the temporary lights on Bjergehuse, Havrvig, and Kjoergaarde Beacons, will, however, be exhibited. Bjergehuse Beacon exhibits a temporary fixed white light visible 12 miles between the bearings of 35° (N. 46° E. Mag.) and 145° (S. 24° E. Mag.).

Havrvig Beacon exhibits a temporary fixed green light visible 7 miles between the bearings 35° (N. 46° E. Mag.) and 145° (S. 24° E. Mag.).

Kjoergaarde Beacon exhibits a temporary fixed red light visible 9 miles between the bearings 41° (N. 52° E. Mag.) and 151° (S. 18° E. Mag.).

Pilots for Esbjerg will meet incoming vessels in the fairway north of Soren Bovbjergs Dyb.

For positions and descriptions of light buoys and buoys see Section 4, Sub-section (E) of this Warning. The main and auxiliary channels at Nordmans Tief are clear of moored mines.

4. Light Vessels and Light Buoys.

(A) Helgoland Bight Mine Field (Western Side).

The following light vessels and light buoys have been established off the western edge of the Helgoland Bight Mine Field:

(a) Dogger Bank Noord Light Vessel, exhibiting a flashing white light every 15 seconds in lat. 56° N., lon. 5° E.; fog siren every 30 seconds.

(b) No. 1 red conical light and whistle buoy exhibiting an occulting white light every 10 seconds in lat. 55° 39′ 30″ N., lon. 4° 45′ E.

(c) No. 2 black conical light and whistle buoy exhibiting an occulting white light every 10 seconds in lat. 55° 22′ 30″ N., lon. 4° 29′ E.

(d) No. 3 red conical light and whistle buoy exhibiting an occulting white light every 10 seconds in lat. 55° 07′ N., lon. 4° 15′ E. (It is reported that this buoy has disappeared.)

(e) Dogger Bank Zuid Light Vessel, exhibiting a group flashing white light showing two flashes every 15 seconds in lat. 54° 45′ N., lon. 3° 58′ 30″ E.; fog siren gives two blasts every 2 minutes.

(f) No. 4 black conical light and whistle buoy exhibiting an occulting white light every 10 seconds in lat. 54° 20′ N., lon. 3° 56′ E. (The light on this buoy is reported extinguished.)

(g) No. 5 red conical light and whistle buoy exhibiting an occulting white light every 10 seconds in lat. 53° 54′ N., lon. 3° 54′ E.

(h) No. 5A black can light and whistle buoy exhibiting an occulting white light every 10 seconds in lat. 53° 29′ N., lon. 3° 52′ E.

(B) Helgoland Bight Mine Field (Eastern Side).

The following light buoys have been established on the eastern side of the Helgoland Bight Mine Field:

(a) A light buoy marked "F. 1," exhibiting a group flashing white light showing two flashes every 12 seconds in lat. 55° 10′ N., lon. 7° 30′ E. (Reported extinguished.)

(b) A black light buoy marked "F. 3" exhibiting a group flashing white light showing two flashes every 12 seconds in lat. 54° 55′ N., lon. 7° 30′ E.

(c) A light and whistle buoy marked "F. 5" exhibiting a group flashing white light showing two flashes every 12 seconds in lat. 54° 24′ N., lon. 6° 50′ E.

(d) A light and whistle buoy marked "F. 6" exhibiting a group flashing white light showing two flashes every 12 seconds in lat. 54° 24′ N., lon. 5° 50′ E.

(e) A black light buoy exhibiting a group flashing white light showing four flashes every 18 seconds in lat. 53° 48′ 42″ N., lon. 7° 13′ 18″ E.

(Continued)

Sheet No. 3 of No. 63. January 6, 1920.

North Sea (Continued)

NOTE.—This light buoy will remain in position until the Norderney Light Vessel is replaced on her peace time position.

(C) Helgoland Bight Channel.

The following light buoys have been established on the Helgoland Bight Route:

(a) No. 2 black light buoy exhibiting a group flashing white light showing two flashes, every 18 seconds in (approximately) lat. 54° 33′ 30″ N., lon. 7° 23′ 30″ E.

(b) No. 3 black light buoy exhibiting a group occulting white light showing two eclipses every 12 seconds in (approximately) lat. 54° 41′ N., lon. 7° E.

NOTE.—At a distance of 110 yards westward of No. 3 light buoy a light and whistle buoy No. 3A has been established exhibiting a group occulting red light having two eclipses every 12 seconds.

NOTE.—Both these light buoys are reported to be extinguished.

(c) No. 4 black light buoy exhibiting a flashing white light every 7½ seconds in (approximately) lat. 54° 49′ 30″ N., lon. 6° 30′ E. (Reported extinguished.)

(d) No. 5 black light buoy exhibiting a group flashing white light showing two flashes every 12 seconds, in (approximately) lat. 54° 55′ 30″ N., lon. 6° 18′ E.

(e) No. 5A black light and whistle buoy exhibit-

ing a group flashing white light every 7½ seconds in lat. 55° 09′ 18″ N., lon. 5° 49′ 30″ E.

(f) No. 6 black light buoy exhibiting a group flashing white light showing four flashes every 18 seconds in (approximately) lat. 55° N., lon. 5° 10′ E. (Reported extinguished.)

(g) No. 7 black light buoy exhibiting a flashing white light every 7½ seconds in (approximately) lat. 54° 53′ 30″ N., lon. 4° 35′ E.

NOTE.—Several reports have been received that the positions of the above marks are unreliable.

(D) Borkum Reef to Haaks Channel.

The following light vessels and light buoys have been established on the Borkum Reef to Haaks Channel:

(1) A black light and whistle buoy marked "A" exhibiting an occulting white light every 8 seconds in lat. 53° 48′ N., lon. 5° 50′ E.

(2) A black light and whistle buoy marked "B" exhibiting a group flashing white light showing four flashes every 18 seconds in lat. 53° 48′ 42″ N., lon. 5° 34′ 12″ E.

(3) A black light and whistle buoy marked "C" exhibiting a group flashing white light showing two flashes every 18 seconds in lat. 53° 49′ 06″ N., lon. 5° 16′ 30″ E.

(4) A light vessel exhibiting a group flashing white light showing three flashes every 10 seconds in lat. 53° 49′ N., lon. 5° E. Fog siren gives two blasts and one blast alternately every half minute.

NOTE.—Near the Light Vessel is a watch buoy. This light vessel will shortly be moved to position lat. 53° 34′ 30″ N., lon. 4° 34′ E.

(5) A black light and whistle buoy marked "D" exhibiting a flashing white light every 7½ seconds in (approximately) lat. 53° 41′ N., lon. 4° 47′ E.

NOTE.—This light and whistle buoy will shortly be renamed Light Buoy "E."

(6) A black light and whistle buoy marked "E" exhibiting an occulting white light every 8 seconds in (approximately) lat. 53° 34′ 30″ N., lon. 4° 34′ E.

NOTE.—This light and whistle buoy will shortly be moved to position lat. 53° 49′, lon. 5° E., and renamed Light Buoy "D."

(E) Jutland Coastal Route.

The following light buoys and buoys have been established on the Jutland Coastal Route:

(1) A black staff with one ball over one cone point upwards in lat. 56° 22′ 24″ N., lon. 8° 01′ 42″ E.

(2) A black staff with two cones points upwards in lat. 56° 15′ 36″ N., lon. 8° 02′ 15″ E.

(3) A black staff with one ball in lat. 56° 07′ 45″ N., lon. 8° 01′ 20″ E.

(4) A black staff with one cone point downward in lat. 55° 59′ 15″ N., lon. 8° 02′ 36″ E.

(5) A black staff with two cones points downwards in lat. 55° 53′ 58″ N., lon. 8° 04′ 18″ E.

(6) A black staff with one ball in lat. 55° 48′ 41″ N., lon. 8° 05′ 12″ E.

(7) A black staff with one cone point upwards in lat. 55° 41′ 32″ N., lon. 8° 03′ 45″ E.

(8) A white can buoy with three down turned brooms in lat. 55° 36′ 20″ N., lon. 8° 01′ 30″ E.

(9) A red light and whistle buoy exhibiting a flashing white light every 15 seconds in lat. 55° 35′ 19″ N., lon. 8° E.

(10) A red conical buoy with three upturned brooms in lat. 55° 34′ 20″ N., lon. 7° 57′ 36″ E.

(11) A red conical buoy with one upturned broom in lat. 55° 32′ 40″ N., lon. 7° 55′ 40″ E.

(12) A red and white horizontally striped light and whistle buoy exhibiting an occulting red light every 7 seconds in lat. 55° 31′ 24″ N., lon. 7° 56′ 06″ E. (Soren Bovbjergs Dyd Sud.)

(Continued)

Sheet No. 4 of No. 63. January 6, 1920

North Sea (Continued)

(13) A red conical buoy with two upturned brooms in lat. 55° 31′ 18″ N., lon. 7° 57′ 34″ E.

(14) A green wreck buoy with two flags lying to the northeastward of the wreck in lat. 55° 30′ 55″ N., lon. 7° 58′ 17″ E.

(15) A red conical buoy with three upturned brooms in lat. 55° 30′ 31″ N., lon. 7° 59′ 03″ E.

(16) The Cancer Light and Whistle Buoy painted red, exhibiting a flashing white light every 15 seconds in lat. 55° 29′ 27″ N., lon. 8° 02′ 02″ E.

(17) A white can buoy with two down turned brooms in lat. 55° 32′ 10″ N., lon. 7° 56′ 45″ E.

(18) A white can buoy with one down turned broom in lat. 55° 31′ 18″ N., lon. 7° 58′ 14″ E.

(19) A white can buoy with three down turned brooms in lat. 55° 30′ 48″ N., lon. 7° 59′ 30″ E.

W. C. ASSERSON,
Captain, U. S. Navy,
Acting Hydrographer.

[Endorsed]: United States District Court. No. 17,692. Libelant's Exhibit No. 4. Filed Dec. 29, 1924. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. Mine Warnings to Mariners.

No. 4748. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jan. 4, 1926. F. D. Monckton, Clerk.

LIBELANT'S EXHIBIT No. 5.

NAVY DEPARTMENT,
U. S. HYDROGRAPHIC OFFICE,
Washington, D. C.

MINE WARNINGS TO MARINERS.

No. 63A. January 6, 1920.

(Cancels Former No. 58A.)

The following is a list of U. S. Mine Warnings to Mariners, which are still in force, and copies of which may be obtained from the Hydrographic Office or its Branch Offices:

Zone	Number of Warning
GENERAL	44
NORTH SEA	63
BALTIC	
Baltic, Area No. 1	58

MEDITERRANEAN

Mediterranean, Areas Nos. 1, 2, 3 and 4 ... 50
Addendum No. 1 61
Mediterranean, Area No. 5 62
Mediterranean, Areas Nos. 6 and 7 52
Addendum No. 1 60
Mediterranean, Area No. 8 .....
.....Chart Supplement No. 21
Mediterranean, Area No. 8 (Southwest Portion) 53
Mediterranean, Area No. 8 (Northwest Portion) 54
Mediterranean, Area No. 8 (Northeast Portion) 55
Mediterranean, Area No. 8 (Southeast Portion) 56

CAUTION.—Vessels are cautioned against anchoring, except in cases of emergency, submarines should not dive, and trawling is prohibited in certain areas where it is possible that sunken mines may still be lying on the bottom. For limits of these areas see British Admiralty Notices to Mariners, and the Hydrographic Office Notice to Mariners.

NOTE.—In addition to the above Mine Warnings to Mariners masters are advised that the Hydrographic Office issued the following charts illustrating the information contained in the Warnings.

Supplement to the Pilot Chart of the North Atlantic Ocean showing the mined areas and safe channels in the "North Sea." Published December, 1919.

Supplement to the Pilot Chart of the North Atlantic Ocean showing the mined areas and safe channels in the "Waters on the West Coasts of France, Spain, and Portugal, and in the Mediterranean Sea." Published July, 1919.

Supplement to "Mine Warnings to Mariners" No. 21 showing the mined areas and safe channels in the Black Sea.

W. C. ASSERSON,
Captain, U. S. Navy,
Acting Hydrographer.

[Endorsed]: United States District Court. No. 17,692. Libelant's Exhibit No. 5. Filed Dec. 29, 1924. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

No. 4748. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jan. 4, 1926. F. D. Monckton, Clerk.

LIBELANT'S EXHIBIT No. 6.

NAVY DEPARTMENT,
U. S. HYDROGRAPHIC OFFICE,
Washington, D. C.

MINE WARNINGS TO MARINERS.

No. 65. February 17, 1920.

The following which is the latest information that has been received by the Hydrographic Office is taken from Mine Warnings to Mariners Nos. 323 and 328 issued by the British Admiralty, London, England, and cancels "Mine Warnings to Mariners" No. 63 issued by the Hydrographic

Office under date of January 6, 1920, relating to the North Sea. Authority: International Mine Clearance Committee:

North Sea.

1. Mariners are hereby informed that in the North Sea Zone described below navigation is unrestricted except as laid down in Sections 2 and 3 of this Warning.

Bounded on the north by the parallel of lat. 61° N.; on the east and south by the Scandinavian coast to the meridian of lon. 9° E., thence by that meridian to the coast of Denmark, and thence by the northwest European coast as far as Boulogne, and thence by the line joining Boulogne and Dungeness, and on the west by the east and north coasts of Great Britain as far as Cape Wrath; thence by the meridian of lon. 5° W.

2. Mine Fields.

(A) Helgoland Bight.

Except as hereinafter provided ships are to avoid the area bounded as follows:

(1) On the north by a line passing through the following positions: Lat. 56° 12′ N., lon. 5° 30′ E.; lat. 56° 12′ N., lon. 7° E.; and lat. 56° 02′ N., lon. 7° 40′ E.

(2) On the east by a line passing through the following positions: Lat. 56° 02′ N., lon. 7° 40′ E.; lat. 55° 34′ N., lon. 7° 40′ E.; lat. 55° 28′ 45″ N., lon. 8° 00′ E.; lat. 55° 20′ N., lon. 8° 00′ E.; lat. 55° 20′ N., lon. 7° 57′ E.; lat. 55° 10′ N., lon. 7° 57′ E.; lat. 55° 10′ N., lon. 7° 30′ E.; lat. 54° 55′ N., lon. 7° 30′ E.; lat. 54° 41′ N., lon. 7° E; lat. 54° 24′ N., lon. 6°

50′ E.; lat. 54° 24′ N., lon. 5° 50′ E.; and lat. 53° 31′ N., lon. 5° 50′ E.

(3) On the south by a line drawn parallel to the low water mark and 3 miles from it from lat. 53° 32′ N., lon. 5° 50′ E., to lat. 53° 28′ 30″ N., lon. 5° 21′ E., and thence by a line passing through the following positions: Lat. 53° 28′ N., lon. 5° 21′ E.; lat. 53° 29′ N., lon. 5° 20′ E.; lat. 53° 28′ N., lon. 5° 17′ E.; lat. 53° 28′ N., lon. 5° 15′ E.; lat. 53° 28′ 30″ N., lon. 5° 15′ E.; lat. 53° 28′ N., lon. 5° 07′ E.; lat. 53° 26′ N., lon. 5° E.; lat. 53° 54′ N., lon. 5° E.; and lat. 53° 54′ N., lon. 4° 03′ E.

(4) On the west by a line passing through the following positions: Lat. 53° 54′ N., lon. 4° 03′ E.; lat. 54° N., lon. 4° 04′ E.; lat. 54° 34′ N., lon. 4° 19′ E.; lat. 54° 53′ N., lon. 5° E.; lat. 54° 57′ N., lon. 4° 29′ 30″ E.; lat. 55° 02′ N., lon. 4° 22′ E.; lat. 55° 48′ N., lon. 4° 53′ E.; and lat. 56° 12′ N., lon. 5° 30′ E.

(B) Caution.

Vessels are cautioned against anchoring, except in cases of emergency, submarines should not dive, and trawling is prohibited in certain areas where it is possible that sunken mines may still be lying on the bottom.

For limits of these areas see British Admiralty Notices to Mariners, and the Hydrographic Office Notice to Mariners.

3. Routes.

(A) All the waters in the North Sea Zone are open to surface navigation with the exception of the areas described in Section 2 of this Warning. The following routes are also open:

(B) Helgoland Bight Channel.

A channel has been swept, the center line of which passes through the following positions: Lat. 54° 49′ 30″ N., lon. 4° 20′ E.; lat. 55° 09′ N., lon. 5° 49′ E.; lat. 54° 54′ N., lon. 6° 10′ E.; and lat. 54° 39′ 30″ N., lon. 6° 59′ E. This channel is 10 miles wide, 5 miles on either side of the center line between Dogger Bank Zuid Light Vessel and No. 5 light buoy. Between Nos. 5 and 3 light buoys it is 5½ miles wide, 1½ miles on the south side of the center line and 4 miles on the north side. For positions of light buoys see Section 4 of Sub-section (C) of this Warning. It should be noted that some of these marks are not now in the center line of the channel. The channel as described above should be followed and not the line of the marks.

(C) Borkum Reef to Haaks Channel.

A channel 12 miles wide, through the mine field described in Section 2 sub-section A has been

(Continued)

opened to navigation. The northern boundary of this channel is the parallel of lat. 53° 54′ N., and the southern boundary is a line joining the following positions. (a) Lat. 53° 42′ N., lon. 5° 50′ E.; (b) lat. 53° 42′ N., lon. 5° 04′ E.; and (c) 53° 40′ N., lon. 5° E.

(D) Jutland Coastal Route.

A route has now been buoyed along the Jutland Coast through Danish territorial waters, and through Soren Bovjergs Dyb. This route is only intended for use during daylight and can be used

by vessels drawing up to 18½ feet of water. The lights on the light buoys and the temporary lights on Bjergehuse, Hævrvig, and Kjoergaarde Beacons, will however, be exhibited. Bjergehuse Beacon exhibits a temporary fixed white light visible 12 miles between the bearings 35° (N. 46° E. Mag.) and 145° (S. 24° E. Mag.)

Havrvig Beacon exhibits a temporary fixed green light visible 7 miles between the bearings 35° (N. 46° E. Mag.) and 145° (S. 24° E. Mag.).

Kjoergaarde Beacon exhibits a temporary fixed red light visible 9 miles between the bearings 41° (N. 52° E. Mag.) and 151° (S. 18° E. Mag.).

Pilots for Esbjerg will meet incoming vessels in the fairway north of Soren Bovbjergs Dyb.

For positions and descriptions of light buoys and buoys see Section 4, Sub-section (E) of this Warning. The main and auxiliary channels at Nordmæns Tief are clear of moored mines.

4. Light Vessels and Light Buoys.

(A) Helgoland Bight Mine Field (Western Side).

The following light vessels and light buoys have been established off the western edge of the Helgoland Bight Mine Field:

(a) Dogger Bank Noord Light Vessel, exhibiting a flashing white light every 15 seconds in lat. 56° N., lon. 5° E.; fog siren every 30 seconds.

(b) No. 1 red conical light and whistle buoy exhibiting an occulting white light every 10 seconds in lat. 55° 39′ 30″ N., lon. 4° 45′ E.

NOTE.—This buoy is reported to have drifted about 30 miles 20° (N. 34° E. Mag.) from its charted position.

(c) No. 2 black conical light and whistle buoy exhibiting an occulting white light every 10 seconds in lat. 55° 22′ 30″ N., lon. 4° 29′ E.

(d) No. 3 red conical light and whistle buoy exhibiting an occulting white light every 10 seconds in lat. 55° 07′ N., lon. 4° 15′ E.

(e) Dogger Bank Zuid Light Vessel, exhibiting a group flashing white light showing two flashes every 15 seconds in lat. 54° 45′ N., lon. 3° 58′ 30″ E.; fog siren gives two blasts every 2 minutes.

(f) No. 4 black conical light and whistle buoy exhibiting an occulting white light every 10 seconds in lat. 54° 20′ N., lon. 3° 56′ E.

(g) No. 5 red conical light and whistle buoy exhibiting an occulting white light every 10 seconds in lat. 53° 54′ N., lon. 3° 54′ E.

(B) Helgoland Bight Mine Field (Eastern Side).

The following light buoys have been established on the eastern side of the Helgoland Bight Mine Field:

(a) A light buoy marked "F. 1." exhibiting a group flashing white light showing two flashes every 12 seconds in lat. 55° 10′ N., lon. 7° 30′ E.

(b) A black light buoy marked "F. 3" exhibiting a group flashing white light showing two flashes every 12 seconds in lat. 54° 55′ N., lon. 7° 30′ E.

(c) A light and whistle buoy marked "F. 5" exhibiting a group flashing white light showing two flashes every 12 seconds in lat. 54° 24′ N., lon. 60° 50′ E.

(d) A light and whistle buoy marked "F. 6" exhibiting a group flashing white light showing two flashes every 12 seconds in lat. 54° 24′ N., lon. 5° 50′ E.

(e) A black light buoy exhibiting a group flashing white light showing four flashes every 18 seconds in lat. 53° 48′ 42″ N., lon. 7° 13′ 18″ E.

NOTE.—This light buoy will remain in position until the Norderney Light Vessel is replaced on her peace time position.

(C) Helgoland Bight Channel.

The following light buoys have been established on the Helgoland Bight Route:

(a) No. 2 black light buoy exhibiting a group flashing white light showing two flashes every 18 seconds in (approximately) lat. 54° 33′ 30″ N., lon. 7° 23′ 30″ E.

(b) No. 3 black light buoy exhibiting a group occulting white light showing two eclipses every 12 seconds in (approximately) lat. 54° 41′ N., lon. 7° E.

NOTE.—At a distance of 110 yards westward of No. 3 light buoy a light and whistle buoy No. 3A has been established exhibiting a group occulting red light having two eclipses every 12 seconds.

(Continued)

Sheet No. 3 of No. 65. February 17, 1920.

North Sea (Continued)

NOTE.—Both of these light buoys are reported to be extinguished.

(c) No. 4 black light buoy exhibiting a flashing white light every 7½ seconds in (approximately) lat. 54° 49′ 30″ N., lon. 6° 30′ E. (Reported extinguished).

(d) No. 5 black light buoy exhibiting a group flashing white light showing two flashes every 12 seconds, in (approximately) lat. 54° 55′ 30″ N., lon. 6° 18′ E.

(e) No. 5A black light and whistle buoy exhibiting a group flashing white light every 7½ seconds in lat. 55° 09′ 18″ N., lon. 5° 49′ 30″ E.

(f) No. 6 black light buoy exhibiting a group flashing white light showing four flashes every 18 seconds in (approximately) lat. 55° N., lon. 5° 10′ E. (Reported extinguished).

(g) No. 7 black light buoy exhibiting a flashing white light every 7½ seconds in (approximately) lat. 54° 53′ 30″ N., lon. 4° 35′ E.

NOTE.—Several reports have been received that the positions of the above marks are unreliable.

(D) Borkum Reef to Haaks Channel.

The following light vessels and light buoys have been established on the Borkum Reef to Haaks Channel:

(1) A black light and whistle buoy marked "A" exhibiting an occulting white light every 8 seconds in lat. 53° 48′ N., lon. 5° 50′ E.

(2) A black light and whistle buoy marked "B" exhibiting a group flashing a white light showing four flashes every 18 seconds in lat. 53° 48′ 42″ N., lon. 5° 34′ 12″ E.

(3) A black light and whistle buoy marked "C" exhibiting a group flashing white light showing two flashes every 18 seconds in lat. 53° 49′ 06″ N., lon. 5° 16′ 30″ E.

(4) A black light and whistle buoy marked "D" exhibiting an occulting white light every 8 seconds in lat. 53° 49′ N., lon. 5° E.

(5) A black light and whistle buoy marked "E" exhibiting a flashing white light every 7½ seconds in (approximately) lat. 53° 41′ N., lon. 4°

47′ E. NOTE.—This buoy has disappeared.

(6) A light vessel exhibiting a group flashing white light showing two flashes every 10 seconds in lat. 53° 34′ 36″ N., lon. 4° 33′ 54″ E. Fog siren gives two blasts and one blast alternately every half minute. (This light vessel is reported to be exhibiting a fixed white light temporarily.) NOTE. —Near the light vessel is a watch buoy.

(E) Jutland Coastal Route.

The following light buoys and buoys have been established on the Jutland Coastal Route:

(1) A black staff with one ball over one cone point upwards in lat. 56° 22′ 24″ N., lon. 8° 01′ 42″ E.

(2) A black staff with two cones points upwards in lat. 56° 15′ 36″ N., lon. 8° 02′ 15″ E.

(3) A black staff with one ball in lat. 56° 07′ 45″ N., lon. 8° 01′ 20″ E.

(4) A black staff with one cone point downward in lat. 55° 59′ 15″ N., lon. 8° 02′ 36″ E.

(5) A black staff with two cones point downwards in lat. 55° 53′ 58″ N., lon. 8° 04′ 18″ E.

(6) A black staff with one ball in lat. 55° 48′ 41″ N., lon. 8° 05′ 12″ E.

(7) A black staff with one cone point upwards in lat. 55° 41′ 32″ N., lon. 8° 03′ 45″ E.

(8) A white can buoy with three down turned brooms in lat. 55° 36′ 20″ N., lon. 8° 01′ 30″ E.

(9) A red light and whistle buoy exhibiting a flashing white light every 15 seconds in lat. 55° 35′ 19″ N., lon. 8° E.

(10) A red conical buoy with three upturned brooms in lat. 55° 34′ 20″ N., lon. 7° 57′ 36″ E.

(11) A red conical buoy with one upturned broom in lat. 55° 32′ 40″ N., lon. 7° 55′ 40″ E.

(12) A red and white horizontal striped light and whistle buoy exhibiting an occulting red light every 7 seconds in lat. 55° 31′ 24″ N., lon. 7° 56′ 06″ E. (Soren Bovbjergs Dyd Sud.)

(13) A red conical buoy with two upturned brooms in lat. 55° 31′ 18″ N., lon. 7° 57′ 34″ E.

(14) A green wreck buoy with two flags lying to the northeastward of the wreck in lat. 55° 30′ 55″ N., lon. 7° 58′ 17″ E.

(15) A red conical buoy with three upturned brooms in lat. 55° 30′ 31″ N., lon. 7° 59′ 03″ E.

(16) The Cancer Light and Whistle Buoy painted red, exhibiting a flashing white light every 15 seconds in lat. 55° 29′ 27″ N., lon. 8° 02′ 02″ E.

(17) A white can buoy with two down turned brooms in lat. 55° 32′ 10″ N., lon. 7° 56′ 45″ E.

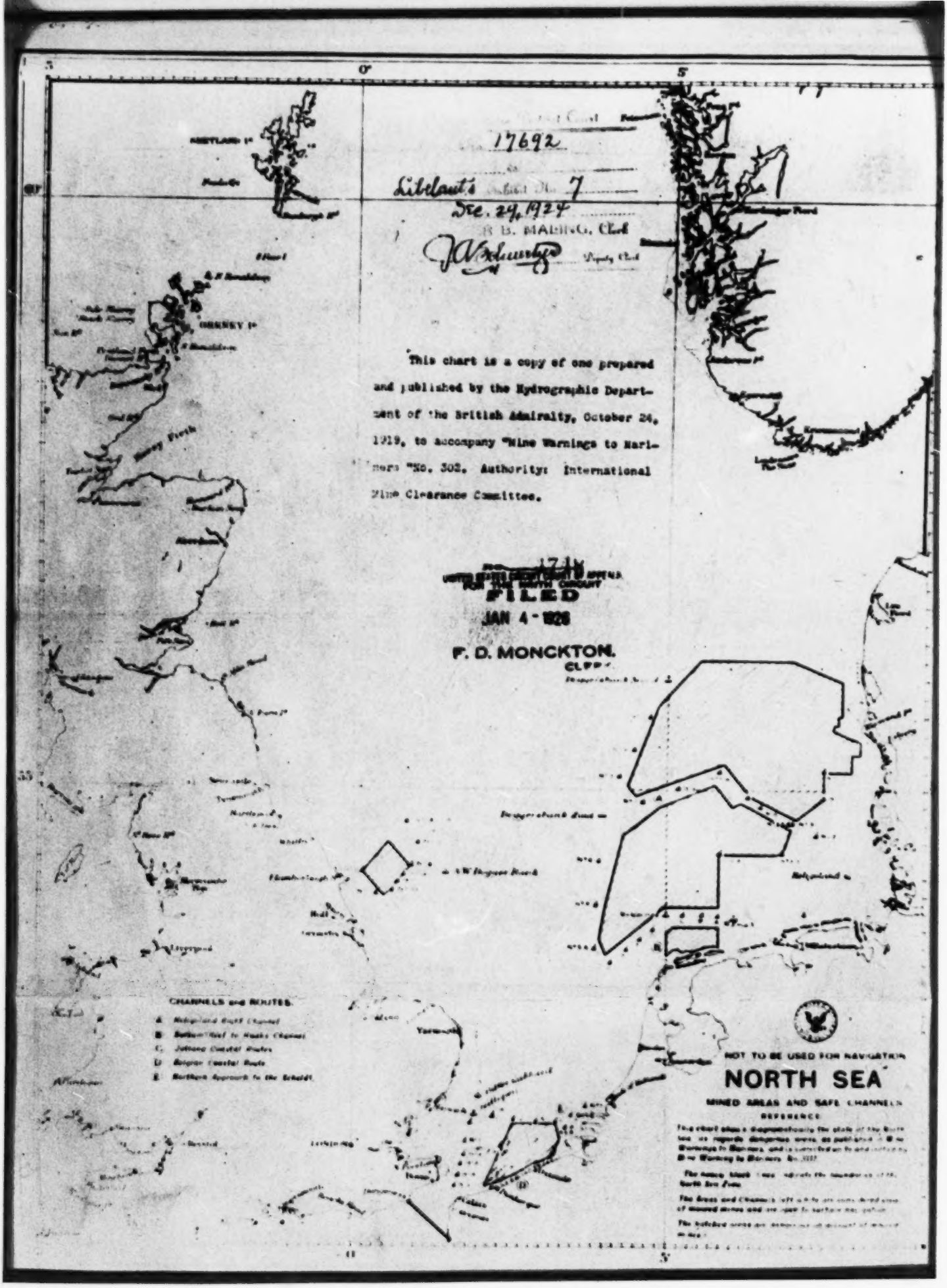
(18) A white can buoy with one down turned broom in lat. 55° 31′ 18″ N., lon. 7° 58′ 14″ E.

(19) A white can buoy with three down turned brooms in lat. 55° 30′ 48″ N., lon. 7° 59′ 30″ E.

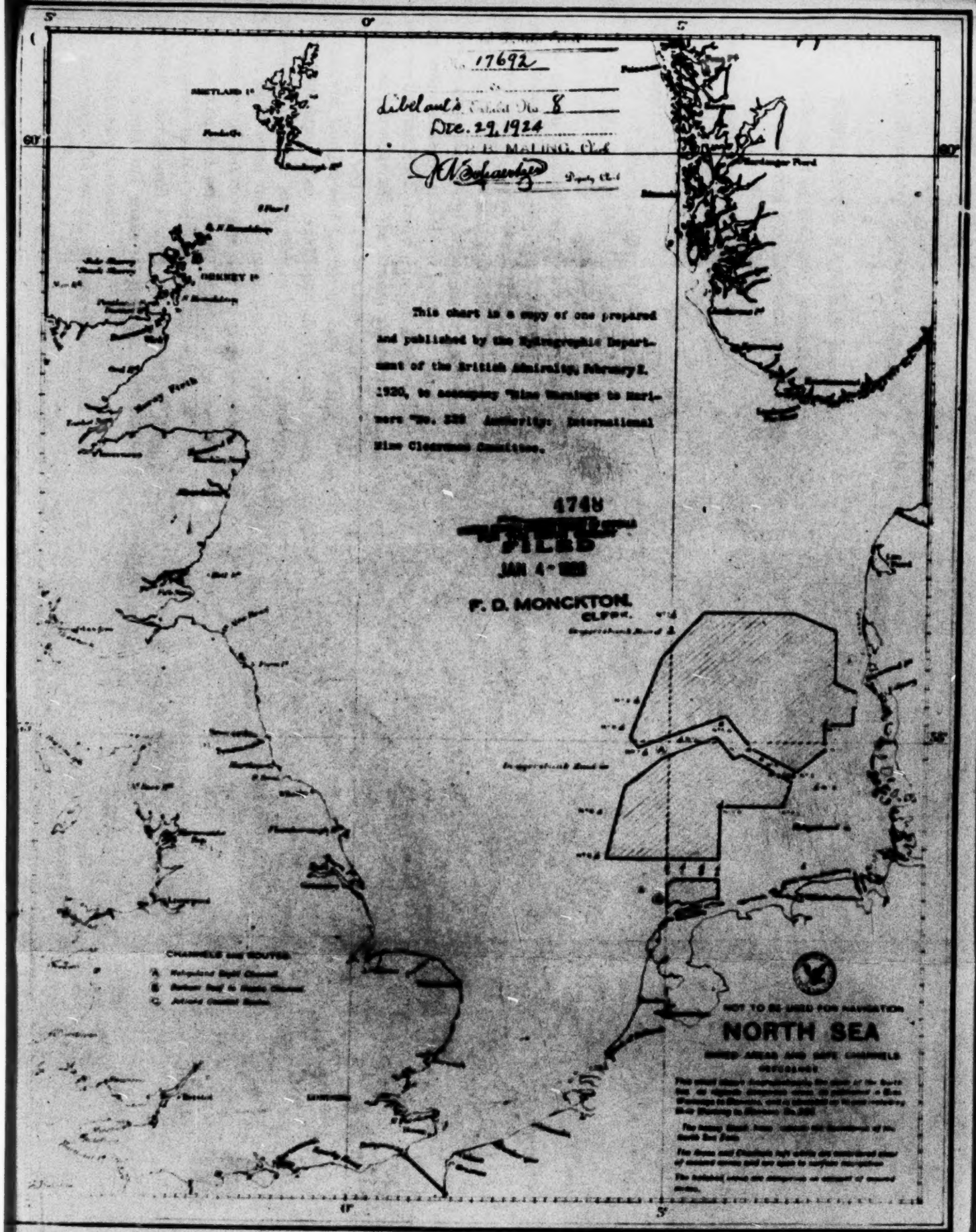
W. C. ASSERSON,
Captain, U. S. Navy,
Acting Hydrographer.

[Endorsed]: United States District Court. No. 17,692. Libelant's Exhibit No. 6. Filed Dec. 29, 1924. Walter B. Maling. Clerk. By J. A. Shaertzer, Deputy Clerk. Mine Warnings to Mariners.

No. 4748. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jan. 4, 1926. F. D. Monckton, Clerk.


17692
Liblaut's
Dec. 29, 1927
R B. MARING, Chief
This chart is a copy of one prepared and published by the Hydrographic Department of the British Admiralty, October 24, 1919, to accompany "Mine Warnings to Mariners" No. 302. Authority: International Mine Clearance Committee.
FILED
JAN 4 - 1928
F. D. MONCKTON.
CLERK
CHANNELS and ROUTES
A
B
C
D
E
NOT TO BE USED FOR NAVIGATION
NORTH SEA
MINED AREAS AND SAFE CHANNELS
REFERENCE

Ex. 8.


17692
Libelant's Exhibit No 8
Dec. 29, 1924
J. B. McLING, Clerk
This chart is a copy of one prepared and published by the Hydrographic Department of the British Admiralty, February 2, 1920, to accompany "Mine Warnings to Mariners" No. 328 Admiralty International Mine Clearance Committee.
4748
FILED
JAN 4
F. D. MONCKTON
CLERK.
CHANNELS AND ROUTES
NOT TO BE USED FOR NAVIGATION
NORTH SEA

Washington, D.C. published Feb. 1920 at the Hydrographic Office under the authority of the SECRETARY OF THE NAVY

Supplement to the Pilot Chart of the North Atlantic Ocean

63

LIBELANT'S EXHIBIT No. 9.

[Letter-head of Williams, Dimond & Co.]

San Francisco, February 24th, 1922.

No. 3000—FAH:O-187.

Messrs. Rosenberg Brothers and Company,
334 California Street,
San Francisco.

Gentlemen:

Attention, Mr. Higgins.
SS. "West Cayote" Voyage 51.

Referring to our conversation regarding the above-named steamer, on which reservations were made by you for shipment of 3,000 bags of Rice, the latter part of December, 1919.

Owing to the fact that our office has moved and been renovated several times since that date, we are, unfortunately, unable to locate all our records, but we do find that under date of December 16th, 1919, we circularized the trade, announcing that the SS. "West Cayote" was expected to sail for Rotterdam, London and Liverpool, late January.

A few days later, conditions developed which seemed to indicate that certain business which we had in sight when this steamer was originally announced would not develop, and we then telephoned shippers who had previously expressed an interest in shipping to Rotterdam, advising them of the proposed change and stating that the SS. "West Cayote" would not make Rotterdam, but would call at Hamburg instead.

A few days following, it was found that this

Rotterdam tonnage which was doubtful, had developed firm, and, therefore, the various interested shippers were again advised by telephone that the schedule as originally intended, would be adhered to.

Page No. 2

Futher search of our dock records brought to light the tissue copy of Permit No. 2660, which was issued at this officer on January 13th, 1920, upon your request, covering shipment of 3,000 100-pound bags of Rice, marked J H 371 Rotterdam, for forwarding on the SS. "West Cayote."

This shipment was covered by Shippers' Export Declaration No. 82819, as noted on this tissue copy of the Permit.

The shipment arrived at our Pier as follows—
Car R I 47219—600 sacks
Car Pennsylvania 25532—1000 sacks
By team delivery—850 sacks
By barge delivery—550 sacks

The delivery of these 3,000 sacks was completed at our dock on January 24th, 1920, receipted for by clerk Benjamin (Ben)

Following instructions received by you several days later, this lot of 3,000 sacks was reloaded by us at your expense in cars B & M 70448, B & O 171-813, C M & St P 70014, St L & S F 127487, and moved off the dock on February 3rd, 1920.

That information, you will note, is all contained on copy of Permit next attached.

Page No. 3

We also find from copies of telegrams in our files to our Coast Agents, that definite decision was made about January 8th or 9th to adhere to our schedule as announced in our circular letter of December 16th, 1919.

We might also state that at the time, no change was made in our advertisement in the "Guide," owing to the fact that the situation was changing every two or three days, and, therefore, the advertisement as originally placed was permitted to stand, and where any specific inquiries were made, shippers were verbally advised as to the several changes as they occurred from time to time.

Should you desire any further information in connection with this matter, we would be very pleased to hear from you.

Yours faithfully,

WILLIAMS, DIMOND & CO.,

Managing Agents.

F. A. HOOPER,

General Freight Agent.

enclosure

[Endorsed]: United States District Court. No. 17,692. Libelant's Exhibit No. 9. Filed Dec. 29, 1924. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

No. 4748. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jan. 4, 1926. F. D. Monckton, Clerk.

LIBELANT'S EXHIBIT No. 10.

[Endorsed]: United States District Court. No. 17,692. Libelant's Exhibit No. 10. Filed Dec. 29, 1924. Walter B. Maling Clerk. By J. A. Schaertzer, Deputy Clerk.

No. 4748. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jan. 4, 1926. F. D. Monckton, Clerk.

Seattle-Tacoma, Wash. Tuesday November 25, 1919.

THE DAILY INDEX Official Daily Shipping Paper of all Transportation Companies and Shipping Interests of Puget Sound.

Thirty First Year of Publication VOLUME 31 No. 277

Entered at Seattle Postoffice as Second Class Mail Matter

EUROPEAN PACIFIC LINE
(Freight only)

United States Shipping Board———Steel Steamers
From Seattle For

CARDIFF ROTTERDAM

S.S. WEST ALETA.....Dec. 10
(Shipping permits required)

To be followed by frequent sailings thereafter to various

EUROPEAN PORTS

Rates and space on application

W. C. DAWSON & Co., AGENTS

5th floor Mutual Life Bldg Seattle Main 37

Seattle-Tacoma, Wash. Wednesday November 26 1919

THE DAILY INDEX Official Daily Shipping Paper of all Transportation Companies and Shippings Interests of Puget Sound.

Thirty First Year of Publication VOLUME 31 No. 278

Entered at Seattle Postoffice as Second Class Mail Matter

EUROPEAN PACIFIC LINE

(Freight Only)

United States Shipping Board———Steel Steamers

From Seattle For

CARDIFF ROTTERDAM

S.S. WEST ALETA.....Dec. 10

(Shipping permits required)

To be followed by frequent sailings thereafter to various

EUROPEAN PORTS

Rates and space on application

W. C. DAWSON & Co., AGENTS

5th floor Mutual Life Bldg Seattle Main 37

Seattle-Tacoma, Wash. Friday November 28 1919

THE DAILY INDEX Official Daily Shipping

Paper of all Transportation Companies and Shipping Interests of Puget Sound.

Thirty First Year of Publication VOLUME 31 No. 279

Entered at Seattle Postoffice as Second Class Mail Matter

EUROPEAN PACIFIC LINE

(Freight only)

United States Shipping Board———Steel Steamers From Seattle For

CARDIFF ROTTERDAM

S.S. WEST ALETA.....Dec. 10

(Shipping permits required)

To be followed by frequent sailings thereafter to various

EUROPEAN PORTS

Rates and space on application

W. C. DAWSON & Co., AGENTS

5th floor Mutual Life Bldg Seattle Main 37

Seattle-Tacoma, Wash. Saturday November 29 1919

THE DAILY INDEX Official Daily Shipping Paper of all Transportation Companies and Shipping Interests of Puget Sound.

Thirty First Year of Publication VOLUME 31 No. 280

Entered at Seattle Postoffice as Second Class Mail Matter

EUROPEAN PACIFIC LINE
(Freight only)

United States Shipping Board———Steel Steamers
From Seattle For

CARDIFF ROTTERDAM

S.S. WEST ALETA.....Dec. 10
(Shipping permits required)
To be followed by frequent sailings thereafter to various

EUROPEAN PORTS

Rates and space on application

W. C. DAWSON & Co., AGENTS
5th floor Mutual Life Bldg Seattle Main 37

Seattle-Tacoma, Wash. Monday December 1 1919
THE DAILY INDEX Official Daily Shipping Paper of all Transportation Companies and Shipping Interests of Puget Sound.

Thirty First Year of Publication VOLUME 31
No. 281

Entered at Seattle Postoffice as Second Class Mail Matter

EUROPEAN PACIFIC LINE

(Freight only)

United States Shipping Board———Steel Steamers

From Seattle For

CARDIFF ROTTERDAM

S.S. WEST ALETA.....Dec. 10

(Shipping permits required)

To be followed by frequent sailings thereafter to various

EUROPEAN PORTS

Rates and space on application

W. C. DAWSON & Co., AGENTS

5th floor Mutual Life Bldg Seattle Main 37

Seattle-Tacoma, Wash. Tuesday, December 2 1919

THE DAILY INDEX Official Daily Shipping Paper of all Transportation Companies and Shipping Interests of Puget Sound.

Thirty First Year of Publication VOLUME 31 No. 282

Entered at Seattle Postoffice as Second Class Mail Matter

EUROPEAN PACIFIC LINE

(Freight only)

United States Shipping Board———Steel Steamers
From Seattle For

CARDIFF ROTTERDAM

S. S. WEST ALETA.....Dec. 15
(Shipping permits required)

To be followed by frequent sailings thereafter to various

EUROPEAN PORTS

Rates and space on application

W. C. DAWSON & Co., AGENTS
5th floor Mutual Life Bldg Seattle Main 37

Seattle-Tacoma, Wash. Wednesday December 3 1919
THE DAILY INDEX Official Daily Shipping Paper of all Transportation Companies and Shipping Interests of Puget Sound.

Thirty First Year of Publication VOLUME 31
No. 283

Entered at Seattle Postoffice as Second Class Mail Matter

EUROPEAN PACIFIC LINE

(Freight only)

United States Shipping Board———Steel Steamers
From Seattle For

CARDIFF ROTTERDAM

S. S. WEST ALETA.....Dec. 15
(Shipping permits required)

To be followed by frequent sailings thereafter to various

EUROPEAN PORTS

Rates and space on application

W. C. DAWSON & Co., AGENTS

5th floor Mutual Life Bldg Seattle Main 37

Seattle-Tacoma, Wash. Thursday December 4 1919
THE DAILY INDEX Official Daily Shipping Paper of all Transportation Companies and Shipping Interests of Puget Sound.

Thirty First Year of Publication VOLUME 31
No. 284

Entered at Seattle Postoffice as Second Class Mail Matter

EUROPEAN PACIFIC LINE

(Freight only)

United States Shipping Board———Steel Steamers
From Seattle For

CARDIFF ROTTERDAM

S. S. WEST ALETA.....Dec. 15
(Shipping permits required)

To be followed by frequent sailings thereafter to various

EUROPEAN PORTS

Rates and space on application

W. C. DAWSON & CO., AGENTS

5th floor Mutual Life Bldg Seattle Main 37

Seattle-Tacoma, Wash. Friday December 5 1919

THE DAILY INDEX Official Daily Shipping Paper of all Transportation Companies and Shipping Interests of Puget Sound.

Thirty First Year of Publication VOLUME 31 No. 285

Entered at Seattle Postoffice as Second Class Mail Matter

EUROPEAN PACIFIC LINE

(Freight only)

United States Shipping Board———Steel Steamers
From Seattle For

CARDIFF ROTTERDAM

S. S. WEST ALETA.....Dec. 15

(Shipping permits required)

To be followed by frequent sailings thereafter to various

EUROPEAN PORTS

Rates and space on application

W. C. DAWSON & CO., AGENTS

5th floor Mutual Life Bldg Seattle Main 37

Seattle-Tacoma, Wash. Monday December 8 1919
THE DAILY INDEX Official Daily Shipping Paper of all Transportation Companies and Shipping Interests of Puget Sound.
Thirty First Year of Publication VOLUME 31 No. 287.
Entered at Seattle Postoffice as Second Class Mail Matter

EUROPEAN PACIFIC LINE

(Freight only)

United States Shipping Board———Steel Steamers
From Seattle For

CARDIFF ROTTERDAM

S. S. WEST ALETA.....Dec. 15
(Shipping permits required)

To be followed by frequent sailings thereafter to various

EUROPEAN PORTS

Rates and space on application

W. C. DAWSON & CO., AGENTS
5th floor Mutual Life Bldg Seattle Main 37

Seattle-Tacoma, Wash. Tuesday, December 9 1919
THE DAILY INDEX Official Daily Shipping Paper of all Transportation Companies and Shipping Interests of Puget Sound.
Thirty First Year of Publication VOLUME 31 No. 288.
Entered at Seattle Postoffice as Second Class Mail Matter

EUROPEAN PACIFIC LINE

(Freight only)

United States Shipping Board———Steel Steamers
From Seattle For

CARDIFF ROTTERDAM

S. S. WEST ALETA.....Dec. 15
(Shipping permits required)

To be followed by frequent sailings thereafter to various

EUROPEAN PORTS

Rates and space on application

W. C. DAWSON & CO., AGENTS

5th floor Mutual Life Bldg Seattle Main 37

Seattle-Tacoma, Wash. Wednesday December 10 1919

THE DAILY INDEX Official Daily Shipping Paper of all Transportation Companies and Shipping Interests of Puget Sound.

Thirty First Year of Publication VOLUME 31 No. 289.

Entered at Seattle Postoffice as Second Class Mail Matter.

EUROPEAN PACIFIC LINE

(Freight only)

United States Shipping Board———Steel Steamers
From Seattle For

CARDIFF ROTTERDAM

S. S. WEST ALETA.....Dec. 15
(Shipping permits required)

To be followed by frequent sailings thereafter to various

EUROPEAN PORTS

Rates and space on application

W. C. DAWSON & CO., AGENTS
5th floor Mutual Life Bldg Seattle Main 37

Seattle-Tacoma, Wash. Thursday December 11 1919

THE DAILY INDEX Official Daily Shipping Paper of all Transportation Companies and Shipping Interests of Puget Sound.

Thirty First Year of Publication VOLUME 31 No. 290.

Entered at Seattle Postoffice as Second Class Mail Matter

EUROPEAN PACIFIC LINE

(Freight only)

United States Shipping Board———Steel Steamers
From Seattle For

CARDIFF ROTTERDAM

S. S. WEST ALETA.....Dec. 15

(Shipping permits required)

To be followed by frequent sailings thereafter to various

EUROPEAN PORTS

Rates and space on application

W. C. DAWSON & CO., AGENTS

5th floor Mutual Life Bldg Seattle Main 37

Seattle-Tacoma, Wash. Friday December 12 1919

THE DAILY INDEX Official Daily Shipping Paper of all Transportation Companies and Shipping Interests of Puget Sound.

Thirty First Year of Publication VOLUME 31 No. 291.

Entered at Seattle Postoffice as Second Class Mail Matter

EUROPEAN PACIFIC LINE

(Freight only)

United States Shipping Board———Steel Steamers
From Seattle For

CARDIFF ROTTERDAM

S. S. WEST ALETA.....Dec. 15

(Shipping permits required)

To be followed by frequent sailings thereafter to various

EUROPEAN PORTS

Rates and space on application

W. C. DAWSON & CO., AGENTS

5th floor Mutual Life Bldg Seattle Main 37

Seattle-Tacoma, Wash. Saturday December 13 1919
THE DAILY INDEX Official Daily Shipping Paper of all Transportation Companies and Shipping Interests of Puget Sound.
Thirty First Year of Publication VOLUME 31 No. 292.
Entered at Seattle Postoffice as Second Class Mail Matter

EUROPEAN PACIFIC LINE

(Freight only)

United States Shipping Board——Steel Steamers
From Seattle For

CARDIFF ROTTERDAM

S. S. WEST ALETA.....Dec. 15

(Shipping permits required)

To be followed by frequent sailings thereafter to various

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Rates and space on application

W. C. DAWSON & CO., AGENTS

5th floor Mutual Life Bldg Seattle Main 37

Seattle-Tacoma, Wash. Monday December 15 1919
THE DAILY INDEX Official Daily Shipping Paper of all Transportation Companies and Shipping Interests of Puget Sound.
Thirty First Year of Publication VOLUME 31 No. 293.
Entered at Seattle Postoffice as Second Class Mail Matter

EUROPEAN PACIFIC LINE

(Freight only)

United States Shipping Board———Steel Steamers

From Seattle For

CARDIFF ROTTERDAM

S. S. WEST ALÆTA .....Dec. 18

(Shipping permits required)

To be followed by frequent sailings thereafter to various

EUROPEAN PORTS

Rates and space on application

W. C. DAWSON & CO., AGENTS

5th floor Mutual Life Bldg Seattle Main 37

Seattle-Tacoma, Wash. Tuesday December 16 1919

THE DAILY INDEX Official Daily Shipping Paper of all Transportation Companies and Shipping Interests of Puget Sound.

Thirty First Year of Publication VOLUME 31 No. 294.

Entered at Seattle Postoffice as Second Class Mail Matter

EUROPEAN PACIFIC LINE

(Freight only)

United States Shipping Board———Steel Steamers
From Seattle for

CARDIFF ROTTERDAM

S. S. WEST ALETA.....Dec. 18

(shipping permits required)

To be followed by frequent sailings thereafter to various

EUROPEAN PORTS

Rates and space on application

W. C. DAWSON & CO. AGENTS

5th floor Mutual Life Bldg Seattle Main 37

Seattle-Tacoma, Wash. Wednesday December 17 1919

THE DAILY INDEX Official Daily Shipping Paper of all Transportation Companies and Shipping Interests of Puget Sound.

Thirty First Year of Publication VOLUME 31 No. 295.

Entered at Seattle Postoffice as Second Class Mail Matter

EUROPEAN PACIFIC LINE

(Freight only)

United States Shipping Board——Steel Steamers
From Seattle for

CARDIFF ROTTERDAM

S. S. WEST ALETA.....Dec. 18
(Shipping permits required)

To be followed by frequent sailings thereafter to various

EUROPEAN PORTS

Rates and space on application

W. C. DAWSON & CO., AGENTS.

5th floor Mutual Life Bldg Seattle Main 37

Seattle-Tacoma, Wash. Thursday December 18 1919

THE DAILY INDEX Official Daily Shipping Paper of all Transportation Companies and Shipping Interests of Puget Sound.

Thirty First Year of Publication VOLUME 31 No. 296

Entered at Seattle Postoffice as Second Class Mail Matter

EUROPEAN PACIFIC LINE

(Freight only)

United States Shipping Board———Steel Steamers
From Seattle for

CARDIFF, ROTTERDAM, HAMBURG

S. S. WEST ALETA.....Dec. 18

LONDON, LIVERPOOL, ROTTERDAM

S. S. CAYOTTE.....Jan. 15

(Shipping permits required)

To be followed by frequent sailings thereafter to various

EUROPEAN PORTS

Rates and space on application

W. C. DAWSON & CO., AGENTS.

5th floor Mutual Life Bldg Seattle Main 37

Seattle-Tacoma, Wash. Friday December 19 1919
THE DAILY INDEX Official Daily Shipping Paper of all Transportation Companies and Shipping Interests of Puget Sound.
Thirty First Year of Publication VOLUME 31 No. 297
Entered at Seattle Postoffice as Second Class Mail Matter

EUROPEAN PACIFIC LINE

(Freight only)

United States Shipping Board———Steel Steamers
From Seattle for

CARDIFF, ROTTERDAM, HAMBURG

S. S. WEST ALETA.....Dec. 19

LONDON, LIVERPOOL, ROTTERDAM

S. S. CAYOTE.....Jan. 15

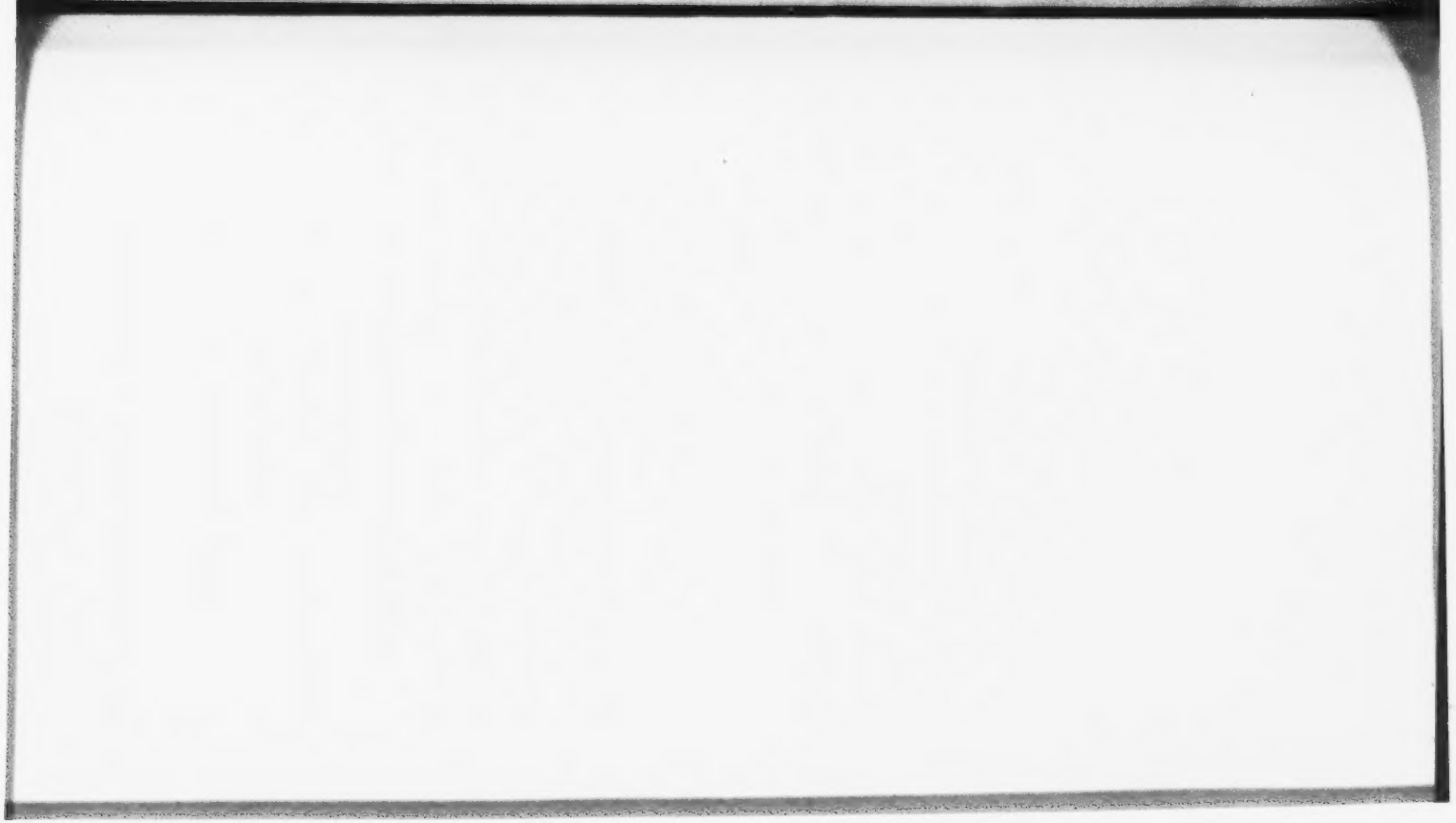
(Shipping permits required)

To be followed by frequent sailings thereafter to various

EUROPEAN PORTS

Rates and space on application

W. C. DAWSON & CO., AGENTS.
5th floor Mutual Life Bldg Seattle Main 37



LIBELANT'S EXHIBIT NO. 11

CHINA MAIL STEAMSHIP COMPANY. LTD.

Akfld fm	1 S	12/7/19	London
Effingham	1 S	12/7/19	1 Hav - 1 Ldn - 1 Pl
Westbrook		9/7/19	1 Hamb London
Westkaten		10/21/19	1 Hamb London
Lockpoint		12/28/19	1 Hamb, Antwerp, Rhenish
Connemara		8/29/19	1 Pool
Orwell		11/18/19	Bristol 1 Pool London
Elbeck		9/6/19	1 Pl 1 Ldn
Crania		10/29/19	1 Ldn 1 Pl Glasgow
Colonia		7/29/19	Hull
Westbeta		8/10/19	Hull Hamburg
Waikanna		2/29/19	Falmouth Danzig
			Hamburg Rotterdam Pool

[Endorsed]:

No. 17692

Libelant's 11.

Dec. 30, 1924

E. B. MALING, Clk

By J. V. Schaudy Deputy Clk

No. 4748

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

FILED

JAN 4 - 1926

F. D. MONCKTON, CLERK

28

LIBELANT'S EXHIBIT No. 12.

[Letter-head of Williams, Dimond & Co.]

Nov. 27, 1919.

San Francisco, November 25th, 1919.

No. 500–EO.

California Wine Association,
216 Pine Street,
San Francisco.

Gentlemen:

SS. "West Aleta."

This will confirm reservation of space for your account covering shipment of 10,000 barrels of Wine to be forwarded from here to Cardiff on the above named steamer.

This will also confirm reservation of space for your account covering shipment of 4,000 barrels of wine to be [In pencil: added 100 Brls. 11/26/19.] forwarded from here to Rotterdam on the above named steamer.

The rate on Wine, in barrels, is $2.10 per 100 lbs., applying from ship's side San Francisco to ship's side Cardiff, and $2.35 per 100 lbs., applying from ship's side San Francisco to ship's side Rotterdam.

Thanking you for this business, and awaiting your further pleasure, we remain

Yours faithfully,
WILLIAMS, DIMOND & CO.,
Managers & Operators.
F. A. HOOPER, O.,
General Freight Agent.

[Endorsed]: United States District Court. No. 17,692. Libelant's Exhibit No. 12. Filed Dec. 30, 1924. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

No. 4748. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jan. 4, 1926. F. D. Monckton, Clerk.

FORM 1 P-01 M

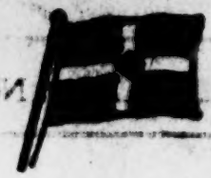
ISTHMIAN STEAMSHIP LINES

PACIFIC-UNITED KINGDOM SERVICE VIA PANAMA CANAL

VANCOUVER, B. C., SEATTLE, PORTLAND, SAN FRANCISCO, LOS ANGELES HARBOR, SAN DIEGO, ETC., TO UNITED KINGDOM PORTS

PACIFIC COAST

ATLANTIC COAST



Received at San Francisco,

1. The shipment may substitute or transfer the whole or any part of the cargo to other vessels, whether operated by the proprietors of the vessels named herein or otherwise, and may forward the goods by other routes than that specified in the bill of lading, in case of accident, delay, or obstruction of any kind, whether existing at the time of shipment or arising during the voyage, and may discharge the goods at any port or place which the vessel may reach, and there store the goods at the risk and expense of the owners of the goods, and such storage shall be equivalent to delivery to the consignee. The vessel may call at any port or ports, whether in or out of the regular course of the voyage, and may sail with or without pilots, and may tow or assist vessels in all situations, and the exemption from liability and the rights and privileges of the vessel shall apply to each and all of the navigation of the vessel, whether connected with the immediate object of the voyage or not. The vessel may carry contraband, explosives, or dangerous goods, and may deviate for the purpose of saving life or property.

2. The shipowner shall not be liable in any capacity for loss, damage, or delay, whether occurring before, during or after loading, transit, transhipment, discharge, delivery or other disposition of the goods, arising from any of the following causes, whatsoever and howsoever occurring: The act of God, perils or accidents of the sea or other waters, and of navigation; unseaworthiness of the shipowner's vessel; collision, stranding, perils or wrecks; fire from any cause or howsoever occurring, on board, in dock or on shore; fault or bursting of the master or other servants of the shipowner; enemies, pirates, robbers, theft by any person whether in the employ of the shipowner or not; arrests or restraints, capture, seizure, detention, interference of any sort, or any act of interference, purporting to be done by any person or persons in authority, whether on land or at sea, whether done with or without any semblance of right; riots, civil commotions, revolutions, insurrections, strikes, lockouts, stoppages of labor or labor troubles of the shipowner's employees or others; shortage or lack of coal, oil, provisions, crew or facilities of any sort, accumulation of cargo; explosion, bursting of boilers; steam, breakage, accidents or derangement of shafting or machinery or appurtenances; unseaworthiness and/or latent or other defect in any part of the hull, boilers, engines, machinery or appurtenances of the vessel, even though existing at the time of shipment or at the commencement of the voyage, provided the shipowner shall have exercised due diligence to make the vessel reasonably seaworthy; heat, frost, dew, rain, storm, cyclone, earthquake, perils of the sea, floods, freshets, ice, hail, lightning, mist, fog, steam pipes or steam or other smothering or injurious effects of fire, heat or steam; decomposition, evaporation, contact with other cargoes, leakage, breakage, denting, bruising, chafing, rusting, rotting, mildew, deterioration, shrinkage, injury from vermin, inherent vice, insufficiency of packing, inadequacy of marks, wastage in bulk or weight, decay, putrefaction, rats, corrosion, contact with oil, acids, lime, or spray, stains, odors of other goods, change of character, change, leakage, shortage, chafing, evaporation, corrosion, explosion or bursting of boilers; explosion of any goods whether shipped with or without disclosure of their nature; insufficiency of package, improperly or defectively packed, addressed or described marks, numbers, addresses or descriptions; injury to or sinking of wrappers or packages, injury from hooks, hoisting, transhipment or by trans and risk of craft and storage thereon; protrusions, or delay of the voyage; giving away, jettison or destruction of wheat, skin or warehouse.

3. General average shall be payable in New York Funds according to York-Antwerp Rules and as to matters not therein provided for, according to the laws and usages of the port of New York. The general average in every instance shall be prepared by average adjusters selected by the shipowner. If the shipowner shall have exercised due diligence to make the vessel in all respects seaworthy and to have her properly manned, equipped and supplied, in case of damage or disaster, resulting from accident or from faults or errors in navigation or in management of such vessel, caused or happening in the vessel, her machinery or appurtenances, from unseaworthiness, even though existing at the time of shipment or at the commencement of the voyage, if the defect or unseaworthiness was not discoverable by the exercise of due diligence, the shipper, consignee or owners of the cargo shall nevertheless pay salvage and any special charges incurred in respect of the cargo and shall contribute with the shipowners in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred for the common benefit or to relieve the adventure of any common peril, all in the same manner and to the same extent as if such accident, cause, damage, or disaster had not resulted from or been occasioned by faults, errors in navigation, or in the management of the vessel, or by any latent or other defect or unseaworthiness. Salvage services rendered to the goods by vessels owned by or in the service of the shipowner shall be paid for as fully as if such vessels were owned by strangers.

4. The shipper, owner, consignee and holder of the bill of lading, shall be liable for and bound to indemnify the shipowner or others against all expenses, liabilities, damages, losses or claims arising from or in connection with dangerous or inflammable goods shipped without full disclosure of their nature, whether such shipping be with or without the knowledge and consent of the shipowner, or of any of his agents, and such goods may be thrown overboard or destroyed at any time without liability to the shipowner, and without compensation, and the shipowner shall not be responsible for any loss of other goods or damage thereto or to the vessel caused by the shipping, handling, stowage or carriage thereof, and the cost of all fines, penalties, losses, damages and expenses incurred by reason of the shipping of such goods shall be paid by the shipper, consignee and/or owner of the goods, and any other goods shipped by such shipper, consignee and/or owner of the goods shall be liable to general average and/or salvage to the full extent of the value thereof.

5. In case of quarantine, sanitation or port regulations, fire, riots, labor troubles, civil commotions, strikes or lockouts, delay caused by the refusal of the crew to perform their duties, or any other cause beyond the control of the shipowner, whether of the same general character as those enumerated herein or not, which may prevent the vessel from entering or leaving any port or place in the usual course of the voyage, or the loading or discharging of cargo at any port or place, the shipowner may, at his option, discharge the cargo at any port or place which he may deem safe and convenient, whether such port or place be the original destination of the vessel or not, and such discharge shall constitute complete performance of the contract and all liability of the shipowner shall cease. The vessel may call at any port or ports, whether in or out of the regular course of the voyage, and may sail with or without pilots, and may tow or assist vessels in all situations, and the exemption from liability and the rights and privileges of the vessel shall apply to each and all of the navigation of the vessel, whether connected with the immediate object of the voyage or not. The vessel may carry contraband, explosives, or dangerous goods, and may deviate for the purpose of saving life or property.

6. The shipowner shall not be liable in any capacity for loss, damage, or delay, whether occurring before, during or after loading, transit, transhipment, discharge, delivery or other disposition of the goods, arising from any of the following causes, whatsoever and howsoever occurring: The act of God, perils or accidents of the sea or other waters, and of navigation; unseaworthiness of the shipowner's vessel; collision, stranding, perils or wrecks; fire from any cause or howsoever occurring, on board, in dock or on shore; fault or barratry of the master or other servants of the shipowner; enemies, pirates, robbers, theft by any person whether in the employ of the shipowner or not; arrests or restraints, capture, seizure, detention, interference of any sort, or any act of interference, purporting to be done by any person or persons in authority, whether on land or at sea, whether done with or without any semblance of right; riots, civil commotions, revolutions, insurrections, strikes, lockouts, stoppages of labor or labor troubles of the shipowner's employees or others; shortage or lack of coal, oil, provisions, crew or facilities of any sort, accumulation of cargo; explosion, bursting of boilers; steam, breakage, accidents or derangement of shafting or machinery or appurtenances; unseaworthiness and/or latent or other defect in any part of the hull, boilers, engines, machinery or appurtenances of the vessel, even though existing at the time of shipment or at the commencement of the voyage, provided the shipowner shall have exercised due diligence to make the vessel reasonably seaworthy; heat, frost, dew, rain, storm, cyclone, earthquake, perils of the sea, floods, freshets, ice, hail, lightning, mist, fog, steam pipes or steam or other smothering or injurious effects of fire, heat or steam; decomposition, evaporation, contact with other cargoes, leakage, breakage, denting, bruising, chafing, rusting, rotting, mildew, deterioration, shrinkage, injury from vermin, inherent vice, insufficiency of packing, inadequacy of marks, wastage in bulk or weight, decay, putrefaction, rats, corrosion, contact with oil, acids, lime, or spray, stains, odors of other goods, change of character, change, leakage, shortage, chafing, evaporation, corrosion, explosion or bursting of boilers; explosion of any goods whether shipped with or without disclosure of their nature; insufficiency of package, improperly or defectively packed, addressed or described marks, numbers, addresses or descriptions; injury to or sinking of wrappers or packages, injury from hooks, hoisting, transhipment or by trans and risk of craft and storage thereon; protrusions, or delay of the voyage; giving away, jettison or destruction of wheat, skin or warehouse.

7. General average shall be payable in New York Funds according to York-Antwerp Rules and as to matters not therein provided for, according to the laws and usages of the port of New York. The general average in every instance shall be prepared by average adjusters selected by the shipowner. If the shipowner shall have exercised due diligence to make the vessel in all respects seaworthy and to have her properly manned, equipped and supplied, in case of damage or disaster, resulting from accident or from faults or errors in navigation or in management of such vessel, caused or happening in the vessel, her machinery or appurtenances, from unseaworthiness, even though existing at the time of shipment or at the commencement of the voyage, if the defect or unseaworthiness was not discoverable by the exercise of due diligence, the shipper, consignee or owners of the cargo shall nevertheless pay salvage and any special charges incurred in respect of the cargo and shall contribute with the shipowners in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred for the common benefit or to relieve the adventure of any common peril, all in the same manner and to the same extent as if such accident, cause, damage, or disaster had not resulted from or been occasioned by faults, errors in navigation, or in the management of the vessel, or by any latent or other defect or unseaworthiness. Salvage services rendered to the goods by vessels owned by or in the service of the shipowner shall be paid for as fully as if such vessels were owned by strangers.

8. The shipper, owner, consignee and holder of the bill of lading, shall be liable for and bound to indemnify the shipowner or others against all expenses, liabilities, damages, losses or claims arising from or in connection with dangerous or inflammable goods shipped without full disclosure of their nature, whether such shipping be with or without the knowledge and consent of the shipowner, or of any of his agents, and such goods may be thrown overboard or destroyed at any time without liability to the shipowner, and without compensation, and the shipowner shall not be responsible for any loss of other goods or damage thereto or to the vessel caused by the shipping, handling, stowage or carriage thereof, and the cost of all fines, penalties, losses, damages and expenses incurred by reason of the shipping of such goods shall be paid by the shipper, consignee and/or owner of the goods, and any other goods shipped by such shipper, consignee and/or owner of the goods shall be liable to general average and/or salvage to the full extent of the value thereof.

9. In case of quarantine, sanitation or port regulations, fire, riots, labor troubles, civil commotions, strikes or lockouts, delay caused by the refusal of the crew to perform their duties, or any other cause beyond the control of the shipowner, whether of the same general character as those enumerated herein or not, which may prevent the vessel from entering or leaving any port or place in the usual course of the voyage, or the loading or discharging of cargo at any port or place, the shipowner may, at his option, discharge the cargo at any port or place which he may deem safe and convenient, whether such port or place be the original destination of the vessel or not, and such discharge shall constitute complete performance of the contract and all liability of the shipowner shall cease. The vessel may call at any port or ports, whether in or out of the regular course of the voyage, and may sail with or without pilots, and may tow or assist vessels in all situations, and the exemption from liability and the rights and privileges of the vessel shall apply to each and all of the navigation of the vessel, whether connected with the immediate object of the voyage or not. The vessel may carry contraband, explosives, or dangerous goods, and may deviate for the purpose of saving life or property.

10. The goods shall be liable for all expenses of carrying, discharging, warehousing and gathering of loose cargo and contents of packages, and for any handling, storage, or other part of whatsoever nature handled on the goods, and for any loading, storage, or other part of whatsoever nature handled on the goods, and for any loading, storage, or other part of whatsoever nature handled on the goods, and for any loading

CONTINUED FROM OVER PAGE

BILL OF LADING NO.

Eastbound S. S. ..... **Voy. No.** ..... **Port of Discharge** .....

SHIPPER .....

CONSIGNEE: ORDER .....
(Mail Address—for Purposes of Delivery)

NOTIFY (if consigned to "Order") .....

SHIPPER'S DESCRIPTION OF GOODS

MARKS AND NUMBERS	NUMBER OF PACKAGES	KIND OF PACKAGE	CONTENTS PACKAGES SAID TO CONTAIN	SHIPPER'S GROSS WEIGHT IN POUNDS	RATE	FREIGHT AND CHARGES

United States District Court
No. 17692

Libelant's Exhibit No. 13
Dec. 21, 1934
WALTER B. MALING, Clerk
By ..... Deputy Clerk

4748
FILED
JAN 4 - 1935
F. D. MONCKTON,
CLERK.

OCEAN FREIGHT

All previous contracts or freight engagements for the shipment of the goods are superseded by this bill of lading, and all its stipulations, exceptions and conditions, whether written, stamped or printed are accepted and agreed by the shipper, owner, consignee or holder to be binding by them so fully as if signed by them, any local customs or privileges to the contrary notwithstanding. If required by the shipowner, one signed bill of lading duly endorsed must be surrendered to the agent of the vessel, at the port of discharge in exchange for delivery order.

IN WITNESS WHEREOF, the shipowner, by its agents has signed .....Bills of Lading, all of this tenor and date, and if one is accomplished, the others shall be void.

DATED AT SAN FRANCISCO this ..... day of ..... 192....

STATE TOLLS

Advance Charges .....

Inland Freight .....

Cartage .....

Insurance .....

Total $ .....

FOR THE ISTHMIAN STEAMSHIP LINES

B/L No.

NORTH PACIFIC COAST LINE

Joint Service of

Holland-America Line
AND
The Royal Mail Steam Packet Company

DIRECT LINE OF SHIPS
BETWEEN
NORTH PACIFIC COAST PORTS
AND
UNITED KINGDOM & CONTINENTAL PORTS

SHIPPED in apparent good order and condition by.....
on board the ship "....." belonging to or employed by the Holland-America Line or the Royal Mail Steam Packet Co. (hereinafter called the Carriers) now lying in or off the port of.....
the goods or packages of merchandise stated to be marked, numbered and described as below:

Marks

No. 17692

Libelant's Exhibit No. 14
Dec. 31, 1924

No. 4748
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT
FILED
JAN 4 - 1926
F. D. MONCKTON,
CLERK

NOTIFY

lbs. Gross Weight

Freight	*at*	*per*	$
		Toll Charges	$
		Charges	$
		Total	$

to be conveyed and delivered to.....
or his or their assigns at..... (hereinafter called the Port of Destination)
under and subject to the conditions and exceptions herein expressed.

The following are the conditions and exceptions above referred to:—

1. METHOD OF CONVEYANCE.—The Carriers to be at liberty to carry the said goods to the port of destination by the above-named ship or by any other vessel or craft either belonging to or employed by the Carriers or belonging to persons proceeding either directly or indirectly to such port and the goods or any portion thereof may at any stage of the voyage be transhipped, or landed stored and reshipped, all risks attending transhipment, landing, stories and/or reshipment being borne by the owners of the goods. The Carriers do not guarantee room on vessels at ports of transhipment and will not be responsible for delay or detention there however caused, and any supplementary expenses, dues, duties, charges occasioned by the transhipment or landing of goods shall be borne by the owners thereof. If the carriage of the goods is performed or partly performed by any other vessel or craft than the above named ship, whether belonging to the Carriers or to other owners or agents, all the conditions, liberties and exceptions herein contained shall apply in such other vessel or craft, and to the owners thereof and their agents or servants as well as to the Carriers in respect of such carriage.

2. DEVIATION.—The said Ship or any other vessel employed in any part of the transport shall be at liberty to deviate, or anticipate her advertised sailing date either before or after proceeding towards the Port of destination, to proceed to and call at any ports or places whatsoever (although in a contrary direction to or out of or beyond the above-named route to the Port of destination) once or oftener in any order and for any purpose whatsoever, and in all such ports, places and sailings shall be deemed to be included within the intended voyage and to call, wait or proceed there, to have liberty to swing or manoeuvre, to tranship passengers or be removed from one berth to another or to dry docked with cargo on board whether prior to the commencement of, after the termination of or at any stage of the voyage; to carry goods on deck; to carry goods of all kinds, dangerous or otherwise; to deviate in any manner and for any purpose whatever, any warranty or rule of Law to the contrary notwithstanding; to transship or land and reship by lighter or otherwise at port of shipment or at any other port or ports into any other ship or conveyance; to tow or to be towed, and to assist vessels in all situations. All the liabilities, conditions and exceptions of this Bill of Lading shall apply to any carrying vessel (any customs or rule of law notwithstanding) although the vessel may have deviated from the ordinary voyage or customary or intended ports of voyage and although such deviation may amount to change or abandonment of the voyage and notwithstanding unseaworthiness or unfitness of the vessel at the commencement of or at any period of the voyage.

3. EXCLUSIONS.—The Carriers will not be responsible for loss, damage, injury or other consequences occasioned by or arising directly or indirectly from any of the following causes, perils or accidents:—The Act of God, the King's Enemies or Pirates; arrest or restraint of Princes, Rulers or Peoples; capture or seizure; Claims of Third Parties, Customs Laws of Foreign Countries; Barratry of Masters or Mariners; Robbery, Theft, or pilferage, whether on board or on land, and whether by persons directly or indirectly in the employ of the Carriers or otherwise; Jettison; Fire or explosion however caused and whatever occurring, whether on land or on water; Stranding; Collision with any vessel or substance belonging either to the Carriers or any other person or persons; Heeling over, upsetting, sinking or foundering of the vessel or any craft, either at sea or in harbour, River or Canal; All and every dangers, perils or accidents of the Seas, Rivers, Canals or other waters, and of navigation of whatsoever kind or kind whatever; Accidents of any kind boilers or machinery, breakages, leakages or unsoundness, breakdowns; Latent defects in the equipment of the vessel or in the hull, machinery, boilers or appurtenances; Explosions or any other act of military authorities, whether in the ship's hold, in lighter, hulk, craft or on shore; Admission of water into the vessel by any cause, whether accidental or for the purpose of extinguishing fire or for any other purpose; Effects of climate, exposure to weather, heat of holds; Vermin, rust, steam, smoke, coal dust or other oil, heat or evaporation, damage to boilers, fresh water, or injury from boilers; Improper or defective storage, leakage, wastage, breakage (however caused), decay, heating, sweating, contact with, or taint from cargo or bunkers; Insufficiency of packing; Insufficiency or inadequacy of marks; Inherent vice or defect; Wrongful delivery or failure to deliver, except in cases in which such liability is specifically assumed hereunder; Any act, omission or default of the Shipper or consignee or agent of either, or any person having any interest in the goods; Riots, strikes, combinations of workmen, lockouts, stoppages, labour disturbances, lock-outs, and trade disputes of any kind (whether the Carriers be party thereto or not), or shortage of labour from whatever cause; Arrest or restraint of Princes, Rulers or Peoples; Civil commotions, revolutions, piracy, civil war, hostilities, warlike operations, whether before or after declaration of war; Blockades, embargoes, sanctions, hostile acts of any government wherever situate, whether recognised by the British Government or not; Capture, seizure, arrest, restraint or detainment (piracy or otherwise) and the consequences thereof or any attempt thereat; Mines, bombs or torpedoes, floating or otherwise, and any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter; Consequences of hostilities or warlike operations, whether before or after declaration of war; Strikes, lockouts, labour disturbances, riots or civil commotions; Confiscation or requisition of any kind whatsoever, whether legal or illegal, by any person, body or authority acting or purporting to act as a government, public or local authority or de facto authority or by any organised body of persons whether or not acting as an army; Any cessation of work, whether partial or general, and whether lawful or unlawful; Any dispute concerning the repair, alteration, removal, discharge or handling of the goods or any part thereof; Any act, omission, error of judgment, mistake, neglect or default of the Master, Officers, Mariners, Engineers or other servants or Agents of the Carriers, or of Pilots, Stevedores or other persons employed by the Carriers or their Agents; or unseaworthiness of the vessel either at the commencement of or at any stage of the voyage provided all reasonable means have been taken by the Carriers to provide against such unseaworthiness nor for any loss of or damage to any goods however caused which is capable of being covered by insurance.

4. DESCRIPTION OF CARGO.—The weight, Measurement, Contents, Marks, Quantity, Brand, Gauge, condition and value of the goods or packages are unknown to the Carriers, and the Carriers are not responsible for or bound by the description and particulars as given, or answerable for any discrepancy between the actual marks and numbers on the packages and those denoted as above. Packages also to other goods however, resulting from wrong declaration of weight, value or contents to be paid by Shippers and/or Receivers of the goods, and the Carriers not to be responsible for loss or damage resulting from incorrect marking of the packages.

5. RESPONSIBILITY FOR PACKAGES.—Each package must be distinctly marked before shipment with the Marks and numbers, and with the Port of Destination in letters of at least two inches in length, otherwise the Carriers will not be responsible for loss, detention or non-delivery thereof. The Carriers will also not be responsible for any loss, damage, delay, detention or non-delivery of packages resulting from insufficient packing, injury to wrappers, inaccuracy, obscurity, illegibility or obliteration of marks or address, or from incorrect description of contents, weight or value of any package in any document or upon such package. All expenses, damage or loss incurred by the Carriers, including loss by delay or detention of the Vessel, and any duty, fine or impost whatsoever levied upon the vessel or imposed upon the Carriers on account of or in connection with the goods, whether by reason of incorrect or insufficient marking of packages or description of their contents, or the contents of any package by the contraction at any part of transhipment or at the port of destination, or the failure to provide any document or to send any other requirement of such authorities, or by ignorance of the nature of the goods, or otherwise howsoever shall be paid by the Shippers or consignees as may be required, and the Carriers shall have a lien upon the goods applicable to and thereof for the recovery of any such amount paid or expenses incurred. Apportionment by the Carriers' Agents of packages which cannot be identified or the contents of which cannot be ascertained of goods of the same description from which packages are missing shall free the Carriers of all liability, and no claim shall arise from alleged inferiority of quality or condition of the goods delivered. If various shipments in bulk are stowed together each therefore shall bear his proportion of loss and/or damage, if any. The Carriers will not be responsible for shortage of grain, grass, peas, and similar articles in single bags, or shortage of contents from cases not covered by bona fide leaks or safety clasps. Any bags of grain, coffee canvas or similar bags to landed short or torn, the Carriers shall accept such proportion of the overplus as shall be allowed by the Agents of the Carriers, and the same shall be deemed a full settlement of any claim for loss in weight. All additional fees, charges or expenses for landing or re-landing, or washing or re-washing of goods, incurred by the Carriers, shall be repaid to the Carriers by the Shipper, and the Carriers shall have a lien for such charges upon all goods of the Shipper in respect of which such expenses were incurred.

(For Continuation of Conditions, see Back.)

In Witness whereof the Master or Agents of the said Ship and its connections have affirmed to..... Bills of Lading, each of this tenor and date, one of which Bills being accomplished, the others to stand void.

Dated in..... this..... day of .....

For Holland-America Line.
The Royal Mail Steam Packet Company.

HARRISON DIRECT LINE

HOMEWARD SERVICE FROM NORTH PACIFIC PORTS

BALFOUR, GUTHRIE & CO., AGENTS

No. 4748

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT
FILED
JAN 4 - 1926
F. D. MONCKTON
CLERK

SHIPPED, by (or received for shipment from).....

in apparent good order and condition, to be transported by the Steamship.....

from the Port of.....or if shipment is whole or in part on board the aforesaid ship conveniently for loading to the Port thereof by said steamship or substituted steamer, either before or after proceeding towards the port of destination above named or beyond it or from and stay at any ports or places whatsoever, including any in a contrary direction to, or out of, or beyond the route named, and/or otherwise, in any order backwards or forwards, for the purpose of trading or for any purpose whatsoever, and there or thereabouts to be delivered alongside or as near thereto as she may safely get always afloat, or if prevented from any cause from at carrier's option for shipment on board another steamer or steamers, whether of the same company as aforesaid or not, and stay at any ports or places whatsoever, including any in a contrary direction to, or out of, or beyond the route named, and/or otherwise, in any order backwards or forwards, for the purpose of trading or for any purpose whatsoever, and there or thereabouts to be delivered alongside or as near thereto as she may safely get always afloat, the following goods or packages, which are to be carried under deck without liability for fire, but the Carrier shall be responsible for the extra risk of fire, if any, caused by the use of steam in the loading or discharging of the goods, and which are to be delivered in the like good order and condition at the aforesaid Port of discharge (the act of God, the Queen's enemies, fire, explosion, accidents of navigation, collision, stranding, barratry of the master or crew, and all and every other dangers and accidents of the seas, rivers and steam navigation, of whatever nature or kind soever, excepted), unto order or to his or their assigns, he or they paying freight for the said goods according to the Rates and Conditions of the Carrier's Tariff in force at the time of shipment, with primage and average accustomed. Dangerous goods to be permitted only by consent and to be stowed to the satisfaction of the Master. Owners not responsible for shortage, unless notified before discharge of ship. Owners not responsible for glass, unless broken to the knowledge of the Master before shipment. Owners not responsible for any claim unless notice of loss be given before the goods are removed from the ship or from the craft in which they are delivered. Owners not responsible for any claim unless suit be brought within one year after the delivery of the goods or the date when the goods should have been delivered. Owners not responsible for any claim unless suit be brought within one year after the delivery of the goods or the date when the goods should have been delivered. Owners not responsible for any claim unless suit be brought within one year after the delivery of the goods or the date when the goods should have been delivered.

MARKS AND NUMBERS	
	Filed in the United States Circuit Court of Appeals
	No. 4748
	Libelants Exhibit No. 15
	Dec. 31, 1924
	F. D. MALING, Clerk
	By [illegible] Deputy Clerk

If and so long as the ship is insured against war risks with a war risks insurance association under or in connection with a war risks insurance scheme of his Majesty's government, the ship in addition to any liberties expressed or implied in this bill of lading shall have the liberty to comply with any orders or directions as to departure, arrival, routes, ports of call, stoppages or otherwise howsoever, given by his Majesty's government, or any department thereof, or any person acting or purporting to act with the authority of his Majesty, or of his Majesty's government, or of any department thereof, or by any committee or person, having under the terms of the war risks insurance on the ship the right to give such orders or directions, and nothing done or not done by reason of any such orders or directions shall be deemed a deviation.

Freight..... Tons @..... £.....

2240

.....Cubic Feet @..... £.....

.....Feet B. M. @..... £.....

..... @..... £.....

being marked and numbered as above (quality, brand, contents, internal condition, weight and value unknown) and to be delivered over ship's side, where ship's responsibility shall cease, in like good order and condition, at the Port of.....

.....(or as near thereto as she may safely get always afloat) unto

ORDER.....

or to his or their assigns, he or they paying freight, in cash, on the arrival of said goods at the port of discharge, in exchange for delivery order, without any allowance of credit or discount, in the United Kingdom; or at current exchange for bankers' bills on London at eight day's sight, if at a port on the Continent of Europe, notwithstanding all customs and regulations of the port of discharge to the contrary, at the rate of

..... per 2240 lbs.

on invoice or landing Gross Weight (at ship's option), with charges as above.

All freight payable on measurement to be paid on the extreme or caliper measurements, the shipowner to have the option of charging on the shippers' measurements or those ascertained on delivery.

IT IS MUTUALLY AGREED that the steamer, in addition to the liberties above mentioned, shall have liberty to carry cargo and live stock on deck, to sail with or without pilots, and to tow and assist vessels in all situations and to save life or property and to deviate for any such purposes; that the carrier shall have liberty to convey goods in craft and/or lighters to and from the steamer at the risk of the owners of the goods, and in case the steamer shall put into a port of refuge, or be prevented from any cause from commencing or proceeding in the ordinary course of her voyage, to land and/or tranship the goods and forward them to their destination by land or water.

IT IS ALSO MUTUALLY AGREED that the carrier shall not be liable for loss or damage or delay occasioned by the Act of God, perils of the seas or other waters or accidents of navigation of whatever nature or kind, collisions, stranding, jettison, fire or explosion from any cause whether on board or ashore or howsoever occurring, barratry of the master or crew, enemies, pirates or robbers, theft of whatever kind and whether by persons on board or not, and whether or not in the employment of the carrier or howsoever, arrest or restraints of princes, rulers or people, civil or political disturbances or hostilities, bursting of boilers, breakage of shafts, accidents to refrigerating or other machinery or appurtenances thereto, any latent defect in hull, machinery or appurtenances, unseaworthiness of the steamer, whether existing at the time of shipment, or at the beginning of the voyage, provided the owners have exercised due diligence to make the steamer seaworthy, heat, steam, rain, snow, spray, frost, thaw, ice, floods, decay, putrefaction, rust, sweat, change of character drainage, leakage, breakage, heating, vermin, stowage or contact with, leakage, smell, evaporation or taint from other goods, coal, coal dust or oil, drainage or taint from live stock or their excretions or their stalls, hook marks, or injury from hooks, nor for any loss or damage or delay arising from the nature of the goods or the insufficiency of package, nor for incorrect delivery of goods arising from the obliteration, errors, insufficiency or absence of marks, address or description, nor for any injury to wrappers or packages, nor for country or inland damage, nor for any loss or detention of or damage to goods whilst in craft or hulk, or during transhipment or while awaiting shipment or delivery, nor for any loss or damage or delay caused by the prolongation of the voyage, nor for deaths of or injury to live stock, however occasioned, nor for any loss or damage or delay whether caused by any act, negligence, default, or error in judgment whatsoever of the pilot, master, crew, lightermen, stevedores or other persons whomsoever, in the service of the carrier or his agents, or persons for whose acts the carrier would otherwise be responsible and whether upon any dock, quay or wharf or elsewhere on shore, or on the steamer herself or any other vessel, lighter or craft, nor for any loss, damage or delay howsoever occurring, caused directly or indirectly by reasonably unavoidable delay of the vessel to repair or renew hull or machinery, or by riots, strikes, stoppage of labour, lock-outs, labour disputes, or disturbances of any kind, or by any reasonable course of action adopted by the ship owner or other person whomsoever in contemplation or consequence thereof or in connection therewith; and that the carrier shall not be concluded as to statements herein of quality, quantity, gauge, brand, contents, condition, measure, weight and value.

ALSO, that Merchandise on wharf awaiting shipment or delivery is at shipper's risk of loss or damage by collapse of wharf, fire and flood not happening through the fault or negligence of the owner, master, agent, or manager of the vessel; and also, that as soon as the goods are discharged over the ship's side wherever they may be, they shall be at the risk of the shipper or consignee, any custom of the port to the contrary notwithstanding.

General average payable according to York-Antwerp Rules. If the owner of the steamer shall have exercised due diligence to make said steamer in all respects seaworthy and properly manned, equipped, and supplied, it is hereby agreed that in case of danger, damage or disaster resulting from fault or negligence of the pilot, master, or crew in the navigation or management of the steamer, or from latent or other defects, or unseaworthiness of the steamer, whether existing at time of shipment, or at the beginning of the voyage, but not discoverable by due diligence, the consignees, shippers and owners of the cargo shall not be exempted from liability for contribution in general average, or for any special charges incurred, but shall contribute in general average, and shall pay such special charges, as if such danger, damage or disaster had not resulted from such fault, negligence, latent or other defects or unseaworthiness. It is further agreed that, in addition to the liability of any other person as owner of the goods, the shippers shall be liable for all contributions in general average and special charges payable in respect of the goods, whether or not he be liable therefor as owner of the goods.

In accepting this Bill of Lading, the Shipper, Owner or Consignee of the goods and the Holder of the Bill of Lading, agree to be bound by all of its stipulations, exceptions and conditions, whether on the face or back hereof, whether written or printed or stamped, as fully as if they were all signed by such shipper, Owner, Consignee or Holder.

IN WITNESS WHEREOF, the Master or Agent of the said Steamship hath affirmed to TWO Bills of Lading, all of this tenor and date, one of which being accomplished and given up to the Carrier, the others to stand void.

Dated in.....By authority as Agents.

BALFOUR, GUTHRIE & CO.

Per.....

1734 8-24

42

HARRISON DIRECT LINE

BALFOUR, GUTHRIE & CO., AGENTS

SHIPPED, by

1. IT IS ALSO MUTUALLY AGREED that the value of the goods shipped hereunder does not exceed the sum of £20 for any one package or the sum of £2 per cubic foot whichever shall be the least unless otherwise stated, and the rate of freight is adjusted accordingly and the carrier's liability shall in no case exceed such sum unless the value in excess thereof be specially declared and stated on the shipping note accompanying the documents and such value bought on which ad valorem paid thereon.

2. ALSO, that the said conditions apply, which gold, silver, bullion, specie, precious stones or metals, coins, jewelry, articles used for jewelry, plate or plated articles, watches, clocks, bank notes or bills, securities for the payment of money, documents, deeds, writings, pictures, paintings, engravings, works of art, silks, manufactured or otherwise, furs, lace, china, glass, pianofortes, jewelry, watches, chronometers of any kind of clocks or any other articles of a valuable nature are carried in that the carrier shall be under no liability beyond such value, unless the true character and value thereof is marked on the shipping note accompanying the goods and entered in the Bill of Lading, and such increased value is paid or agreed to exchange for the Bill of Lading. In the case of glass, china, earthenware or other fragile articles shipped specially declared or not the carrier shall be under no liability for damage or breakage from whatsoever cause arising unless due to improper stowage.

3. ALSO, that liability for the loss of or damage to any piece or package shall never exceed the invoice value of such piece or package.

4. ALSO, that shippers shall be liable for any fines, damages or expenses incurred by the carrier, and any loss or damage to steamer or cargo, caused by or in consequence of inflammable, explosive or dangerous goods, shipped without full disclosure in writing of their nature, whether such shipper be principal or agent, and whether he shall be aware thereof or not and such goods may be thrown overboard or destroyed at any time without compensation.

5. ALSO, that the shippers and consignees and each of them shall be liable for all fines, expenses and damages which the carrier, steamer or cargo may incur or suffer by reason of the illegal, incorrect or insufficient marking, numbering or addressing of packages or description of their contents or by reason of any failure by shippers or consignees to comply with Customs or Port Regulations or other requirements of any Civil Authorities.

6. ALSO, that the carrier shall have a lien on the goods for all freights, demurrage, damages for detention, primages, general average and charges, whether payable in advance or not, and also for all fines, expenses or damages which the carrier, steamer, or cargo may incur or suffer by reason of the illegal, incorrect or insufficient marking, numbering or addressing of packages or description of their contents, or the dangerous or injurious nature thereof, or by reason of any failure by shippers or consignees to comply with Customs or Port Regulations, or other requirements of any Civil Authorities, or any failure by the shippers or consignees to comply with any of the terms of this Bill of Lading. Also, that the carrier shall have a right of sale over goods subject to any lien, and shall have a lien on the goods for the costs and expenses of exercising any lien, and of any sale of the goods; and if on a sale of the goods at destination the freight and charges, the proceeds fail to cover said freight and charges and expenses of exercising any lien thereon and of the sale of the goods, the carrier shall be entitled to recover the difference from the shipper.

7. ALSO, that in case the whole or any part of the goods specified herein be landed at any port whether short of or beyond their destination, even if owing to the negligence of the carrier's agents or servants, the carrier may forward them to their destination by rail or water at the risk of the owner of the goods, and upon so forwarding them shall be under no liability in respect of such handling or of the goods not being landed at their destination.

8. ALSO, that in case the steamer shall be prevented from reaching her destination, or discharging without delay, by generation, blockade, interdict, ice, war, civil or political disturbances, strikes, lock-outs, or if the master shall consider it unsafe, without any delay, to proceed to, enter, or discharge at her destination, or to remain at any port to complete the discharge of the goods, the master may immediately discharge the goods into any depot, lazaretto, lighter, or other vessel, or proceed to and land the goods at any available safe port, and such discharge into depot, lazaretto, lighter or vessel, or landing at another port shall be deemed a final delivery under this contract, and all the expenses thereby incurred on the goods shall be paid by the shipper and/or consignee of the goods and the carrier shall have a lien on the goods therefor.

9. ALSO, that the steamer may discharge the within goods immediately on arrival at any place or places, whether usual, customary or not within the port of destination, which may be selected by the shipowners or their agents, and may discharge continuously on to wharf or into hulk, lazarette or lighter, irrespective of weather, Sundays and holidays included, any custom of the port to the contrary notwithstanding, the proper Port Authority being hereby authorized to grant a general order for discharge immediately on arrival, and if the goods be not taken from the steamer by the consignee directly they come to hand in discharging the steamer without reference to time of day or state of weather, the master or steamer's agent shall be at liberty to enter and land the goods, or put them into craft, warehouse, store, or on the quay, at the receiver's risk and expense, and the steamer and carrier shall have a lien on such goods for the payment of all costs and charges so incurred. The ship's responsibility shall cease immediately on the goods being discharged from the ship's tackle, any custom of the port to the contrary notwithstanding. If the consignee shall take delivery overside he shall use for the purpose craft suitable for the place of discharge selected by the shipowners or their agents.

The consignee shall pay duty or bond the goods at the port of discharge and pay all taxes, dues, or imposts levied on them.

Any duty, tax or impost, of whatever nature, levied upon the steamer at the port of discharge, for or in connection with the goods, shall be paid by the consignee before delivery.

Weight and measurement of all goods shall, if required by the carrier, be verified at the port of discharge, and freight, although prepaid, adjusted and paid accordingly, and all charges for weighing goods in, ascertain freight or for Customs purposes shall be paid by the consignees.

All consignees of landing living animals shall be borne by the shippers and/or consignees.

Full freight or £10 sterling per ton, whichever shall be the greater, will be charged on all goods incorrectly described.

All necessary cooperage charges shall be paid by the consignees. Wharfage and/or Harbor Dues on cargo and all carting to destination shall be paid by the consignees. Porterage of the delivery of the cargo shall be done by the agents of the ship at the risk and expenses of the receivers of the goods, and tonnage and shed dues shall be paid by the consignees of the goods and all metals shall be trucked and paid at their expense. Consignees of lumber shall pay expense of receiving from ship's tackle, stowing and piling on quay.

10. ALSO, that if any existing or future order or restriction of the Board of Trade or Civil Authorities at ports of shipment should prevent the above goods from being conveyed in any steamer, the carrier shall be free of any liability for non-fulfillment of his portion of the contract.

11. ALSO, that all goods carried at through rates via the port of loading and/or to places beyond the port of discharge are subject to all the terms and conditions of the carriers, assisting in their conveyance, and that the carriers shall not be liable for any loss or detention of, or damage to any goods, where the damage is done, or the loss or detention occurs, while the goods are not in the actual possession of the carrier.

12. ALSO, that the carrier, his agents and servants, shall not under any circumstances whatever be under any liability for failure to notify consignees of arrival of goods, any custom of the port to the contrary notwithstanding.

13. ALSO, that freight prepaid shall not be returned, goods lost or not lost.

14. ALSO, that full freight is payable on damaged or unsound goods, and on any goods condemned, confiscated or removed by order of the Port Sanitary or other authority at port of discharge but no freight is due on any increase in bulk or weight caused by the absorption of water during the voyage.

15. ALSO, that freight on live stock is payable on the number shipped, without regard to and irrespective of the number or condition of those landed.

16. ALSO, that this Bill of Lading, duly endorsed, be given up to the steamer's agent, if required, in exchange for delivery order.

17. ALSO, that the carrier shall not be responsible on shipments of lumber, logs, staves, etc., for number of pieces in bundles nor for splits, cracks, flaws or discolorations, shakes and broken bundles (unless same be caused by careless handling of the vessel).

18. ALSO, that in no case can steamer accept responsibility for delivery to other than leading marks.

19. ALSO, any claim which an owner of goods carried on through Bill of Lading desires to prosecute shall only be made against the party in whose possession the goods were when the event occurred on which the claim is based.

20. ALSO, that all disputes under this Bill of Lading arising at U. K. ports, where the sum in dispute or damage claim is not more than £100, shall be settled by arbitration at the port of delivery in the manner customary there.

21. ALSO, that the carrier shall not be accountable on shipments packed in barrels for leakage, breakage or rust except from improper stowage. Freight payable on barrels whether full, part full, or empty.

22. ALSO, that this contract shall be governed by the law of the flag of the vessel carrying the goods, except that General Average shall be adjusted according to York-Antwerp Rules.

23. ALSO, that in case the steamer shall be prevented by ice, in the River Scheldt, from reaching Antwerp, the privilege is reserved of sending steamer's expense, but without steamer's risk, to discharge and store the within-mentioned merchandise at Flushing, or other accessible point, in warehouses or lighters, to be forwarded as soon as practicable to Antwerp by lighters or rail, at the steamer's option and expense, but at the risk of the owner of the goods.

24. ALSO, that Sterling Freight be at the Quoted Short Exchange on London, and Dollar Freight at Fifty Fifteen and Twenty-five Centimes to Gold to the Dollar.

25. ALSO, that the goods be landed on the quay at Antwerp and received therefrom by consignees. Consignees of such goods to pay the agents of the Line the expense of watching and for delivery charges. Fr. 1.50 per 1000 K.

Clauses (23, 24, 25) relate only to shipments destined to Antwerp.

26. **LONDON CLAUSES.** Without prejudice to Clause 9. (a) The shipowners shall, at their option, be entitled to land the goods upon quays situated on the quays, or to discharge them into craft hired by them, immediately on arrival, and so continuously night and day as required, the consignees being entitled to collect the same charges on goods entered for landing at the docks as on goods entered for delivery by craft. Consignees desirous of conveying their goods elsewhere shall, on making application to the Ship's Agents, or to the Dock Company which they may appoint, receive a delivery order which shall have been reported, be entitled to delivery into consignee's lighters at the discharging berth in the dock, the Dock to be free from claims against release, or to the Dock Company, if so directed by the Ship's Agents, who, following customary practice, may require the goods to be landed into craft provided by them. Grain in bags, bran, pollard, linseed cake, oil cake, meal, flour, hides, skins, rags, bones, horns, hoofs, tallow, oils, fats, glue pieces, blind rollers, bales, packs, bundles, sacks, bags, boxes, cases, crates, drums, casks, barrels, hampers, baskets, wheels and oars, 1/3 per ton measurement; hops, 1/6 per ton weight; bullion, specie, precious stones or metals, 2/6 per ton weight at ship's option. All other general cargo except steam, 1/3 per ton weight or measurement at ship's option. Timber to pay 2/- per ton weight. Cheese may also be removed by consignee's own lighters, but in such case shall be subject to a like payment of 2/3 per ton weight, such sum to include landing up and primage, but not to include any extra expense for handling if removed. All measurement freight to be on the basis of 40 cubic feet to the ton. Grain (grain excepted) to be paid upon the weight stated herein or at ship's option upon the weight ascertained by the ship's Agents, the expense of weighing to be a charge upon the goods. All shipments of lumber and logs which are sold by measurement to be delivered by measurements furnished at port of shipment. No alterations will be permitted in any weights or measurements.

(b) Grain for overside delivery is to be applied for within 24 hours of ship's docking, or [illegible] hours of sufficient consignee's craft with responsible persons in charge to receive it, and on such [illegible] working hours, the Master or Agent may land or discharge into lighters at the risk and expense of the consignees. Grain may be discharged continuously day and/or night, any grain landed or discharged by ship's [illegible] duly in attendance, and any grain that may be landed or discharged before or after normal [illegible] not, is to be given up free to consignee's craft applying for same within 72 hours from [illegible] usual dock charges. An extra freight of 7d. per ton shall be paid to the shipowner on each [illegible] or not. The grain to be weighed at time of discharge, either on dock and/or quay and/or craft, at ship's [illegible] weighing) for grain in bulk and/or ship's bags, to be paid by the consignee with [illegible] by the ship's Agents, in exchange for release at the rate of 1/3 per ton on wheat, maize and heavy grain; 1/6 per ton on [illegible] ton on oats.

(c) HAY, ILLUMINATING AND LUBRICATING OIL CLAUSE. Consignees to have [illegible] delivery from ship or quay at shipowner's option, working continuously day and/or night, [illegible] goods will be put into Captain's entry craft at consignee's risk and expense.

Craft which are in attendance for delivery under above clause and stipulations shall remain free of demurrage [illegible] or grain as required by shipowners, either from steamer or quay, or Captain's entry craft.

These London clauses A, B and C are to form part of this Bill of Lading, and any words at variance with them are hereby cancelled.

27. ALSO, that the shipowners shall have the same liens, rights and remedies on goods and grain redelivered to the above clauses or under any other clauses of this Bill of Lading, as they have by law in respect of freight.

28. ALSO, that the exceptions and conditions enumerated in this Bill of Lading shall apply during the voyage, and while on the quays or docks of the dock for any purpose whatsoever and until the goods and/or grain are actually delivered to the consignees or their agents.

29. ALSO, that neither party shall be liable for any interference with the performance of the contract hereby entered into to be caused by strikes or lock-outs of seamen, lightermen or shore labourers, whether partial or otherwise, nor for any [illegible] of such [illegible] case the shipowner shall be entitled to land or put into craft at the risk and expense of consignees. In case the goods [illegible] forms part of a larger bulk, each Bill of Lading to bear its proportion of [illegible] and damage, if any.

30. ALSO, that the carrier shall have the benefit of any insurance effected upon the goods.

31. IT IS ALSO MUTUALLY AGREED that this shipment, if made at a United States port, is subject to all the terms and provisions of, and all the exemptions from liability contained in the Act of Congress of the United States, approved on the 13th day of February, 1893, and entitled an Act Relating to Navigation of Vessels, etc., and if made at a Canadian port is subject to all the terms and provisions of, and all the exemptions from liability contained in the Water Carriage of Goods Act, 1910.

Lib. Eb.16.

EASTBOUND.

UNITED AMERICAN LINES

EUROPEAN REPRESENTATIVES & CORRESPONDENTS:

LONDON, E. H. MUNDY & Co. Ltd.
LIVERPOOL, E. H. MUNDY & Co. Ltd.
GLASGOW, E. H. MUNDY & Co. Ltd.
HAMBURG, HAMBURG-AMERIKA LINIE.
DEUTSCHE DAMPFSCHIFFAHRTS-GESELLSCHAFT „KOSMOS".
BREMEN, ROLAND-LINIE AKTIENGESELLSCHAFT.
ANTWERP, KENNEDY, HUNTER & Co.
ROTTERDAM, Wm H. MÜLLER & Co.

UNITED STATES REPRESENTATIVES:

NEW YORK, UNITED AMERICAN LINES
No. Broadway.
GENERAL AGENTS PACIFIC COAST:
BARNES & CHRISTENSEN, San Francisco,
324, California Street.
LOCAL AGENTS PACIFIC COAST:
LOS ANGELES, LOS ANGELES STEAMSHIP COMPANY.
PORTLAND, COLUMBIA PACIFIC SHIPPING COMPANY.
SEATTLE, BARNES & CHRISTENSEN.
CRISTOBAL, THE PANAMA AGENCIES Co.
BALBOA, THE PANAMA AGENCIES Co.

BILL OF LADING

Received at Port of Shipment named overpage by agents for the owners of the vessel named overpage (the term Carrier hereinafter used being intended to include said vessel and any substitute or continuing Carrier) from the Shipper named on the back hereof, the packages described on the back hereof (hereinafter called the Goods, the Carrier's responsibility in respect of description thereof being limited as hereinafter provided), in apparent good order and condition, except as otherwise indicated; **TO BE TRANSPORTED** by vessel named on the back hereof, or failing shipment by said vessel, in or upon another or following vessel or vessels, (the term Vessel hereinafter used being intended to include said vessel and any substituted or continuing vessel), or connecting carrier to the discharging port named on the back hereof, or as near thereto as the Vessel can safely get, and there delivered in like good order and condition, in matters as hereinafter provided for, upon payment of any unpaid freight and other sums payable by the Shipper, Consignee and/or assigns and/or said goods hereunder, to the Consignee named on the back hereof, or order if so provided, subject always to the

TERMS OF THIS CONTRACT BILL OF LADING WHICH ARE HEREBY MUTUALLY AGREED UPON AS FOLLOWS:

1. The freight is adjusted in consideration of all the terms and provisions of the contract whether written, printed or stamped.

2. All particulars herein mentioned of the Goods, except only the number of packages with the marks thereon, are those declared by the shipper and the Carrier (including anything in the bill of lading, where applicable, inconsistent with the foregoing) is relieved from all liability for the accuracy of the description of the Goods as furnished by the shipper (which description is inserted herein only for the purpose of identification of the Goods and is hereby consented to), but shall be deemed only representations of the shipper.

3. Freight and advance charges as indicated on the back, if prepaid or intended to be prepaid, shall be deemed fully and irrevocably earned upon receipt of the goods by the Carrier, vessel or goods lost or not lost, even though voyage is not begun or goods not landed. All freight and charges due the Carrier shall be paid in United States currency, New York funds. If payable at destination prepaid shall be made at the current rate of exchange for United States gold on the day the vessel's entry at the Custom House, unless otherwise provided herein. The carrier shall have a lien on goods on which freight and charges are due for the said freight and charges and may refuse to deliver the goods until freight and charges are paid. Any part of the freight prepayment may be abandoned thereby the shipper remains liable and the Carrier may collect the same from the shipper. All goods shall be jointly and severally liable for such freight and charges and may be detained therefor. Full freight and charges shall be due to the Carrier on accidental, constructive and total loss of Goods, vessel or vessels. Goods lost or not delivered shall remain liable for any freight or charges on Goods, vessel or vessels damaged, delayed or lost during the voyage. In the event of the Carrier being unable to collect all freight and charges due at destination contemplated by the undertaking or abandoning of the Goods by reason thereof, the Carrier shall have the option of selling the goods at auction and the shipper shall be liable for any deficit, should the net proceeds of the sale be insufficient to cover the Carrier's freight and charges. Any surplus from the net proceeds of the sale after discharging the Carrier's freight and charges to be paid to the Consignee or the bills of lading properly endorsed. Freight and charges subject to correction. If weights or other information for freight purposes has been incorrectly given by shipper, the expenses thereof, and any to ascertain the actual weight, etc., shall become an additional charge on the Goods and shall be payable by shipper, consignee and/or assigns.

4. The carrier may substitute another vessel or vessels or transship the whole or any part of the goods by any other vessel, whether operated by the Carrier or by others at the original port of shipment, or at any other place or places deemed advisable by the Carrier for any reason, when necessary for them to reach the destination named herein. The vessel with the goods on board, either before or after proceeding to the destination named herein, may remain in port, proceed by any route and deviate from or change the advertised and intended route at any stage of the voyage and may proceed to and stay at any place whatsoever, although in a contrary direction to or outside of the usual or advertised route, for any purpose whatsoever or otherwise, in any order, backwards or forwards, the liberties granted in this and all other clauses of this contract and/or for any purpose whatsoever that in the opinion of the carrier or master may seem advisable, although pertaining to another voyage. This liberty is not to be considered as exhaustive but by way of illustration only. The vessel may adjust compasses, dock and give trials, carry mails, or without cargo on board, before or after the voyage, and may sail without pilots, tow and assist vessels in all situations and deviate for the purpose of saving life or property.

5. In case the voyage is broken up or is for any reason delayed or interrupted as to make it impracticable so to do, the Carrier may forward the goods to or cancel the port of destination above named by another vessel or conveyance (either of the Carrier or of another), for which an additional freight shall be paid, or may store the same at the nearest practicable place; all at the risk and Expense of the goods, their shipper, owner, and/or consignee. Such forwarding or storage shall constitute a valid delivery under this contract, terminating all responsibility of the Carrier, provided that reasonable notice be dispatched to shipper or consignee; but the Carrier shall retain a lien on the goods for all proper charges and expenses. If salvage services be rendered to the Goods by the Carrier they shall be paid as if rendered by strangers.

6. The Carrier shall not be liable for loss, damage, delay, or default occurring from any of the following causes: Acts of God; restraints of princes, rulers, and people; barratry of master or crew; enemies; pirates; robbers or thieves, whether within or without the ship; war; hostilities; riots; civil commotions; strikes; lockouts; stoppage or disturbance of labor; partizans; epidemics; perils of the sea and other waters; fire, wheresoever occurring and means used to extinguish the same; explosions; collisions; stranding; explosion or bursting of boilers or other Goods; fermentation; heat; frost; breakage of shafts; accidents to machinery; confusion; jettison; standing; delay; detention; prolongation of voyage; accidents of or damage incident to navigation, transportation, or storage of whatsoever kind and wheresoever occurring; risk of craft, hulk, or transshipment; latent or other defect in hull, machinery, or appurtenances of vessel or any craft or unseaworthiness thereof, although existing at the time of or beginning of voyage if not discoverable by due diligence; floods; effects of climate; heat; cold; ice; venting by sea water, rain or otherwise; snow; earthquakes; fumigation; sweat; decay; rust; stains; leakage; breakage; shortage; loss of weight or contents; evaporation; inherent defect, quality, or vice of the goods; vermin; rot damage; loss damage; falling or destruction of wharf, shed, or warehouses; condensation or heat; decay of packages or wrappers, or injury to or rotting of same; obliteration, illegibility or incorrectness of marks, numbers, addresses or description; shortage on account with, or small, leakage, or total loss, or any accident to, any other Goods (the vessels being privileged to carry any lawful merchandise, whether hazardous or contraband or not, including live stock as cargo or otherwise, on or under deck); seizure or detention by process issued by any court or civil authority, any act, omission of the shipper, owner, or consignee of the goods or their representatives; saving or attempting to save life or property at sea or any deviation in rendering such service; any cause (whether or not of the kinds above enumerated) beyond the carrier's reasonable control.

7. General Average shall be payable in accordance with York-Antwerp Rules 1890 and at carrier's option as to matters not therein provided for in accordance with the laws and customs of the port of New York. All General Average statements shall be prepared at the vessel's final port of discharge or elsewhere at the carrier's option. If the carrier shall have exercised due diligence to make the vessel in all respects seaworthy and to have her properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster resulting from fault or error in navigation or in the management of the vessel, or from any latent or other defect in the vessel, or machinery, or appurtenances, or from unseaworthiness, although existing at the time of shipment or at the beginning of the voyage (provided the defect or unseaworthiness was not discoverable by the exercise of due diligence), the shippers, consignees, or owners of the cargo shall nevertheless pay salvage and any special charges incurred in respect to the cargo, and shall contribute with the carrier in General Average to the payment of any sacrifices, losses, or expenses of a General Average nature that may be made or incurred for the common benefit or to relieve the adventure from any common peril.

8. This shipment is subject to all the exemptions and limitations from liability contained in the act of Congress of the United States approved on the 13th day of February, 1893, and entitled "An Act relating to the Navigation of Vessels, etc.," even though the vessel be not transporting property to or from any port in the United States. In the event of shipment being made from a Canadian port the shipment is subject to all the terms and provisions of and all exemptions from liability contained in the recent Carriage Goods Act, 1910.

9. The Carrier shall not be liable for any articles enumerated in Section 4281 of the United States Revised Statutes, except in accordance therewith and after written notice of the true character and value of such goods, given at the time of loading and increased freight paid.

10. Unless a higher value be declared in the dock receipt at time of shipment and stated herein, the value of the Goods does not exceed $ 5.00 per cubic foot or $ 5.00 per 100 pounds and in no event does the carrier assume more than $ 100.00 per package or piece. The freight thereon has been adjusted on such valuation, and no special declaration or agreement shall be evidence of a different valuation. In consideration of the Carrier in respect of the goods no value shall be placed thereon higher than the foregoing cost (including prepaid freight hereunder) and exceeding $ 5.00 per cubic foot or $ 5.00 per 100 pounds, nor in any event $ 100.00 per package or piece (or such other valuation as may be stated herein), nor shall the Carrier be held liable for any profits or increase of price or value over such cost not exceeding such value, nor for any special or consequential damagement the Carrier shall have always the option of replacing any lost or damaged Goods. In case of partial loss or damage, the Carrier shall not be liable for more than such proportion of the sum as $ 100.00, or the value declared herein to the actual value.

11. The Carrier shall not be liable for any loss, shortage of or damage to Goods, or delay in delivery of the same, unless notice of claim therefore be presented in writing to the Carrier or to the master or agent of the vessel before removal of the Goods. No suit or proceeding to recover for or upon any claim or demand shall be maintained against the Carrier or Vessel or Owners thereof unless commenced and summons served upon the Carrier within six months after the delivery of the Goods to the Carrier, and the lapse of such period shall be deemed a complete bar to any such suit or proceeding and cause unconditionally, notwithstanding the Carrier may be a non-resident or a Foreign Corporation. In no case shall the total liability of the Carrier to all claimants in respect of damages arising from any casualty exceed the value of the owner's interest in the vessel, or her vessels and pending freights. Nothing shall be deemed a waiver of the provisions of this article except a written express waiver signed by the Carrier.

12. In case of any loss or damage for which the Carrier shall be liable, the Carrier shall to the extent of such liability have the full benefit of any insurance that may have been effected upon the Goods or against said loss or damage and the Carrier may deduct from any claim hereunder the amount of any loss made by any insurer on the goods pending any claim for the insurance on such goods.

13. If, because of conditions, actual or reported, at or near the port of discharge, such as war, hostilities, insurrections, civil commotions, blockade, interdict or any other regulation of any government, or of combination of the sea or weather, epidemic, disease, quarantine, disturbance of labor, congestion of wharves, lack of discharging facilities, or of any other conditions (whether of the nature or kind hereby named or otherwise, and whether existing or anticipated) not due to the carrier's fault, the master shall reasonably decide that it is unsafe or improper or impracticable to proceed to the said port of discharge, or that the discharge of the cargo is likely to be unreasonably delayed there, or that entry of the port of discharge or communication therewith may render the vessel liable to quarantine at any subsequent port, then the master may, according to his judgment, (1) retain the goods on board for delivery on return to the said port or any other (2) store the goods ashore or on lighters or craft at the port or place where the vessel then is or at the nearest practicable place, or (3) store the goods ashore or on lighters or craft at the port of destination or the nearest practicable place thereto, or at the port nearest thereto to which the vessel is bound, or (4) forward the goods from any place and by any means to or toward the port of destination by such route or conveyance as the master may think proper, all at the risk and expense of the goods, their shipper, owner and/or consignee. Such storage shall constitute a valid delivery hereunder, terminating all responsibility of the Carrier, provided that reasonable notice be dispatched to shipper or consignee; but the Carrier shall retain a lien on the goods for all proper charges and expenses. If salvage services be rendered to the Goods by the Carrier they shall be paid as if rendered by strangers.

14. The vessel may commence discharging immediately on arrival in the customary berth, day or night, at any and all times, whether the vessel be then in dock or not, and may continue discharging until completed, without further notice, and the Goods may be landed and stored at the risk and expense of the Goods and at any time before the goods are taken from the vessel by the consignee thereof or his agent, the Carrier shall be discharged from all responsibility in respect thereof, and a separate charge may be made for each service rendered. The carrier or master may require any or all parts of the cargo to be discharged at any time, in any order, and may refuse to discharge at any other than the usual place of discharge, and may require the whole or any part of the cargo to be taken away by the consignee as fast as discharged from the vessel, and if not so taken away, the same may be discharged on the dock, pier or elsewhere, at the risk and expense of the consignee, and such discharge shall be deemed a complete delivery hereunder, and the Carrier shall not be responsible for any loss or damage thereafter occurring to the goods. If any goods are not taken away from the vessel as fast as discharged, the Carrier shall be entitled to demurrage at the rate of $ 1.00 per day per ton of 2,240 pounds, or pro rata for any part thereof, and a lien therefor is hereby given on the goods. The Carrier shall not be responsible for any loss or damage to the goods while in transit to the vessel, or while on the dock, pier or elsewhere awaiting delivery to the vessel, or after discharge from the vessel, whether the same be lost, damaged or destroyed by fire or otherwise, and whether the Carrier, its agents or servants be negligent or not, and the goods shall be at the risk of the consignee from the time they are discharged from the vessel. The Carrier shall not be responsible for any loss or damage to the goods caused by the act, default or omission of the consignee or his agents or servants, or any other person having possession of the goods, or by the act of God, perils of the sea, fire, barratry of the master or crew, enemies, pirates, robbers, riots, strikes, or stoppage or restraint of labor, explosion, bursting of boilers, breakage of shafts or any latent defect in hull, machinery or appurtenances, or unseaworthiness of vessel, or any cause beyond the Carrier's control. The Carrier shall not be responsible for any loss or damage to the goods caused by the act, default or omission of any pilot or servant of the Carrier, whether such pilot be employed by the Carrier or imposed upon it by law, or for any error in navigation or in the management of the vessel. The Carrier shall not be responsible for any loss or damage to the goods caused by the act, default or omission of any other vessel or craft or of the owners or operators thereof, even though the vessel be in whole or part owned by the Carrier, or under the same management, or controlled by the Carrier, or operated under charter by the Carrier. The Carrier shall not be responsible for any loss or damage to the goods caused by the act, default or omission of any tug employed to assist the vessel, whether such tug be employed by the Carrier or by others. The Carrier shall not be responsible for any loss or damage to the goods caused by the act, default or omission of any lighterman or other person employed in lightering the goods to or from the vessel, whether such lighterman be employed by the Carrier or by others. The Carrier shall not be responsible for any loss or damage to the goods caused by the act, default or omission of any person employed by the Carrier to load or unload the goods or to work the vessel, whether such person be employed by the Carrier or by others. The Carrier shall not be responsible for any loss or damage to the goods caused by the act, default or omission of any person employed by the Carrier to load or unload the goods or to work the vessel, whether such person be employed by the Carrier or by others. The Carrier shall not be responsible for any loss or damage to the goods caused by the act, default or omission of any person employed by the Carrier to load or unload the goods or to work the vessel, whether such person be employed by the Carrier or by others.

15. Goods on wharf, craft or lighter awaiting shipment, transshipment, or delivery shall be at risk of their shippers, owners and consignees as regards fire or pilferage, and also as to the Carrier's craft. No claim shall be made against the Carrier for loss or damage to the Goods, lighter, craft, or other conveyance at or from wharf and/or Carrier's craft.

16. The Carrier shall not be liable for any loss, expense, damage or delay of goods by reason of any failure, whether existing at the time of shipment or thereafter, in the condition or sufficiency of the vessel, her equipment, her machinery, her boilers, her hull, her appurtenances, her stores or her crew, or by reason of the failure of the Carrier to exercise due diligence to make the vessel in all respects seaworthy and properly manned, equipped and supplied, or by reason of any unseaworthiness of the vessel at the commencement of the voyage, or by reason of the vessel not being ready to receive the goods at the time of shipment, or by reason of the vessel not being ready to receive the goods at the time of shipment, or by reason of the vessel not being ready to receive the goods at the time of shipment

mentioned herein in every respect. If owners of the goods during transportation by rail or rail to be by rail payment, should the owners of the goods desire to give special orders for the transportation from port of shipment they must give the use of letters on receipt of the goods there and Carriers will comply with such orders as far as possible, but always at the risk and expense of the goods.

(2) —Open rate at Hamburg Gold Mark 0.10 per 1000 kgs (minimum G.M. 0.30) to be paid by consignee on gold equivalent to the average currency prevailing.

ANTWERP—(1) In case the vessel shall be prevented by ice in the River Scheldt from reaching Antwerp, the goods are to be discharged at the Carrier's option, but without vessel's risk to discharge and store at a recognized warehouse at Flushing or other available ports, in warehouses or lighters, or the first vessel or vessels or conveyance to discharge by lighters or put on the vessel's option and expense, but at the risk of the owner of the goods.

(2) ALSO, that in case the regular steamship sailings to final port of delivery should be suspended or curtailed, by the failure of ice or other causes, the carrier, at the option of the owner or consignee of the goods, or the holder of the Bill of Lading, may forward the goods by the nearest available ports, this or another vessel, to final port of destination at expense of the goods and freight earned to be paid at destination in exposed cash.

(3) ALSO, that the vessel may discharge day and night without interruption. Cargo to be loaded and discharged at the consignee or by the consignees appointed by the shippers; consignees paying customary rates. Working of cargo by consignees at normal rate. Consignees to remove goods from quay in customary quick despatch according to circumstances. Should the time they are on the quay to be exceeded, they shall pay demurrage (the goods during the time they are on the quay to be subject to the conditions of clause 11 and the other clauses of the Bill of Lading), failing which the master shall be at liberty to store the goods or put them into craft without notice (any custom or rule to the contrary notwithstanding) at consignee's risk and expense.

ROTTERDAM/AMSTERDAM—(1) In case the Vessel is prevented from reaching Rotterdam or Amsterdam, by ice or otherwise, the goodsare to be entered at the Vessel's option, but without Vessel's risk, to discharge and store the goods, consignees at either Ports of Holland, Flushing, Zierikzee, Brouwershaven, Willemstad, Moerdijk, Dordrecht, Hellevoet, Maassluis, or Vlaardingen, to be forwarded (& Rotterdam or Amsterdam) by lighters at Vessel's expense, but without Vessel's risk or same as practicable.

(2) ALSO, Sterling freight to be paid at the quoted short exchange on landing on the date of the Vessel's report at the Custom House, but not less than London guilders 0.C. to the £ sterling. Dollar freight to be paid at the quoted rate of eighty cents per New York on the date of Vessel's report at the Custom House, but not less than two and a half cents U. C. to the dollar.

BREMEN—The goods are to be delivered at the City of Bremen free of lighterage, and to be received without any assistance after the vessel or lighter is ready to discharge, at any pier she may select, by the consignee (the responsibility of the vessel to cease immediately the goods are discharged) or there to be stored on the quay or in warehouses, or in inland lighters, at the risk and expense of the consignees. If the river navigation is impeded or threatened to be impeded by ice, the cargo to be stored in BREMEN, HAVEN, NORDENHAM or GEESTEMUENDE, on the quays, or in warehouses, lighters or steamers at the Carrier's option, and at the risk of the consignees, and thence to be forwarded to BREMEN by rail, at the expense and risk of the consignees as soon as sufficient railway trucks are on hand.

HAVRE—The contemporaneous of the delivery of the goods to be done by the consignees of the vessel, at the expense and risk of the consignees of the goods. Goods landed without marks, with wrong ones, or damaged owing to the ignorance of the vessel's agent (or contemporaneous) among the consignees of goods whose lots may be short.

22. Attention of shippers is called to Sec. 237 of the Penal Laws of the United States (Act of Congress, March 4, 1909), viz.: "Every package containing explosives or other dangerous articles, when presented to a common carrier for shipment, SHALL HAVE PLAINLY MARKED ON THE OUTSIDE THEREOF THE CONTENTS THEREOF, and it shall be unlawful for any person to deliver or cause to be delivered to any common carrier engaged in interstate or foreign commerce by land or water, for transportation in interstate or foreign commerce, or to carry upon any vessel or vehicle engaged in interstate or foreign transportation, any explosives or other dangerous articles under any false or deceptive marking, description, invoice, shipping order, or other declaration, or without INFORMING THE AGENT OF SUCH CARRIER OF THE TRUE CHARACTER THEREOF, AT OR BEFORE THE TIME SUCH DELIVERY FOR CARRIAGE IS MADE. Whoever shall knowingly violate or cause to be violated any provision of the section . . . shall be fined not more than $ 2,000 or imprisoned not more than eighteen months, or both."

23. Nothing herein contained is to be taken as depriving the owner of any right to limitation of liability to which he would otherwise be entitled.

24. This Bill of Lading, duly endorsed, shall be given up to the Carrier's representatives in exchange for a delivery order.

25. The shipper, vessel, consignee, destination and goods referred to overpage as mentioned or described on this side (back) hereof are as follows:

Port of Shipment ..... Shipper .....

Vessel ..... Owner of the [redacted] vessel .....

Bound for ..... Destination of Goods .....

Consignee: Order of ..... or assigns. Notify (If consigned to Shipper's Order) .....

SHIPPER'S DESCRIPTION OF GOODS

(Carrier's responsibility for description being limited as hereinbefore provided.)

MARKS	NUMBERS	NUMBER OF PACKAGES	DESCRIPTION OF PACKAGES AND CONTENTS	GROSS WEIGHT

United States District Court
No. 17692
In
Libelant's Exhibit No. 16
Dec. 31, 1924
TER B. MALING, Clerk
Deputy Clerk

No. 4748
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT
FILED
JAN 4 - 1926
F. D. MONCKTON,
CLERK.

FREIGHT PAYABLE AT:

32. AND FINALLY that in accepting this Bill of Lading, the shipper, owner, and consignee of the Goods and holder of this Bill of Lading agree to be bound by all its provisions, on this page and overpage, whether written, printed or stamped, as fully, as if signed by all of them.

In WITNESS WHEREOF..... Bills of Lading (exclusive of non-negotiable copies) all of this tenor and date, have been signed, ONE of which being accomplished the others to stand void.

Dated at _____ 192__

For the Master:

FREIGHT CHARGED ON	RATE	FREIGHT
cbm	per 100 lbs	
	" " "	
	" " "	
	" " "	
	per	
	"	
	"	
	Total Freight	
	Advance Charges	
TOTAL PAYABLE AT _____		

722

B/L No.

EUROPEAN AGENTS

BORDEAUX—Compagnie Generale Transatlantique
15 Quai Louis XVIII

HAVRE— Compagnie Generale Transatlantique
[illegible] Boulevard de Strasbourg

DUNKIRK— Compagnie Generale Transatlantique
Place Alfred Pelpt

ANTWERP—Compagnie Generale Transatlantique
14 Place de Meir

LONDON— Compagnie Generale Transatlantique
4 Lloyd's Avenue

ROTTERDAM—Les Consignataires Reunis
11b Willemsplein

HAMBURG—Les Consignataires Reunis
7 Admiralitaet Strasse

COMPAGNIE GENERALE TRANSATLANTIQUE

FRENCH LINE

PACIFIC COAST AGENTS

VANCOUVER—Empire Shipping Co.
Sub-Agents
815 Hastings Street West

SEATTLE— General Steamship Corporation
Sub-Agents
Colman Building

PORTLAND— General Steamship Corporation
Sub-Agents
Porter Building

SAN FRANCISCO—The Texas Transport & Terminal Co., Inc.
General Agents
240 Battery Street

LOS ANGELES—General Steamship Corporation
Sub-Agents
541 South Spring Street

SAN DIEGO— Sprecke Bros. Commercial Co.
Sub-Agents
Union Building

BILL OF LADING

PACIFIC COAST EUROPEAN SERVICE

RECEIVED in apparent good order and condition from.....

at the port of.....to be transported by the steamship.....
with liberty to substitute (or tranship goods by) any other or succeeding steamer also with liberty either before or after proceeding towards the port of discharge, to proceed to, and/or stay at, any ports or places whatsoever (although in a contrary direction to, or out of, or beyond, the route of said port of discharge) once or oftener, in any order, backwards or forwards, for the purpose of drydocking (even with cargo on board), or loading or discharging cargo or passengers, or for any purpose whatsoever. Nothing in this Bill of Lading, whether written or printed, or implied therefrom, shall limit or affect the provisions of this clause. Also with liberty to the vessel to adjust compasses after commencing voyage, and with liberty to carry horses, cattle, sheep, or other animals on or under deck, and to carry goods of all kinds under, and on deck; the following goods or packages, said to contain merchandise as hereinafter specified, and said to be marked and numbered as per margin below, shippers weight; the quality, quantity, gauge, measurement, weight, value, contents, and/or condition of contents of, or marks on, said merchandise unknown; to be delivered (subject to the exceptions and conditions enumerated herein) at vessel's tackles at the port of.....

.....or so near thereto as the vessel may safely get and always lie afloat, unto.....

.....

.....

or to his or their assigns, he or they paying freight and charges immediately on discharge of the goods without any allowance of credit or discount at the rate stipulated below (unless prepaid at port of shipment), on the gross intaken weight or measurement as below, or as may otherwise result on verification of same at port of destination. Cost of weighing at the expense of the merchandise.

MARKS AND NUMBERS	PKGS.	CONTENTS	WEIGHT	CUBIC FT.	RATE	FREIGHT

In the United States District Court
No. 17693

Libelant's Exhibit No. 17
Filed Dec. 31, 1934
LEO B. MALING, Clerk
By J. A. Schaertzer Deputy Clerk

No. 4749
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT
FILED
JAN 4 - 1936
F. D. MONCKTON.
CLERK.

VALUE DECLARED BY SHIPPERS:

THIS CONTRACT SUBJECT TO ALL THE STIPULATIONS AND AGREEMENTS HEREON SET FORTH ON EITHER SIDE HEREOF

And FINALLY, in accepting this Bill of Lading, the shipper, owner and consignee of the goods and the holder of Bill of Lading agree to be bound by all of its stipulations, exceptions, and conditions, whether written or printed, as fully as if they were signed by each shipper, owner, consignee or holder, and it is hereby mutually stipulated and agreed that this Bill of Lading shall have the effect of special contract.

IN WITNESS WHEREOF, the Master or Agent of the said steamship hath affirmed to.....Bills of Lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated in.....this.....day of.....19..

Accepted as to all the terms and conditions hereof.

COMPAGNIE GENERALE TRANSATLANTIQUE
By THE TEXAS TRANSPORT & TERMINAL CO., INC.
General Agents for Pacific Coast.

.....SHIPPER

By

11/1

General Average payable according to York-Antwerp Rules, 1924, and Amendments, 1926, as to the owner of the steamer shall have exercised due diligence to make said steamer in all respects seaworthy and properly manned, equipped and supplied, it is hereby agreed that in case of damage or disaster resulting from faults or negligence of the navigation or management of the steamer or from latent or other defects or unseaworthiness of the steamer, whether existing at the time of shipment or at the beginning of the voyage, but not discoverable by due diligence, the owner of the cargo shall not be exempt from paying his proportion in general average or salvage or any special charges incurred, but with the said exception shall pay general average and shall pay such special charges as if such damage, damage or disaster had not resulted from fault, negligence, latent or other defects or unseaworthiness. In case of General Average the consignee must sign an average bond and make a deposit of the approximate amount of such general charges if required by the agent.

The rate of freight is computed upon the basis of the following conditions and exceptions:

IT IS MUTUALLY AGREED, that the ship shall have liberty to sail with or without pilots; also to deviate and/or put for the purpose of saving life or property; that the carrier shall have liberty to convey goods in lighters to and from the ship at the risk of the owners of the goods; and in any the ship shall put into a port of refuge, or be prevented from any cause from proceeding by the ordinary course of her voyage to transship the goods to their destination by any other steamship; that the carrier shall not be liable for any claim whatsoever unless written notice thereof shall be given to the carrier upon removal of the goods from the ship or place of discharge. No suit for loss or damage shall in any event be maintainable against the carrier unless instituted within three months after giving written notice as above provided. In no event shall the carrier shall not be liable for loss or damage occasioned by the ship not being seaworthy when receiving; by barratry of the master or crew; by robbers, and/or pirates; land or sea; by arrest and restraint of princes, rulers or people, riots, civil[illegible] or seizure of ship; by collisions, [illegible] boilers, breakage of shafts, or any latent defects in hull machinery or appurtenances, [illegible] error, in judgment, any act, neglect or default whatsoever of pilots, masters or crew in the management or navigation of the ship, collisions and all and every other dangers and accidents of the seas, rivers and canal, and of navigation of whatever nature or kind, excepted or unascertainable of the ship, even existing at the time of shipment or sailing on the voyage, provided the owners have exercised due diligence to make the vessel seaworthy; by heating, decay, putrefaction, risk, ginge, chafage, vermin, mildew, rats, spray, change of character, drainage, leakage, breakage or any loss or damage arising from the nature of the goods or in the insufficiency of packages; nor for land damage or damage by coal dust or for reasonable wear and tear or by contact with other cargo or any loss or for the obliteration, errors, insufficiency or damage of marks, or numbers, address of consignee; nor for risk of craft, hulk or transhipment; nor for any loss or damage caused by the [illegible] [illegible] and that [illegible] shall not be responsible as to correctness of statement, kinds, of weight, measure, quantity, contents and value. Fines, expenses and losses by detention of ship or cargo caused by incorrect markings or by incomplete or incorrect description of contents or weight or any other particulars required by authorities at ports of discharge upon either the package or bill of lading, shall be borne by the owner of the goods.

IT IS ALSO MUTUALLY AGREED that this shipment is subject to and has been made and delivered at, and all the exceptions from liability contained in the Act of Congress of the United States, approved on the 13th day of February, 1893, and entitled "An Act relating to the navigation of vessels, etc."

This Bill of lading when issued covering traffic from a Canadian port is subject to all the terms and provisions of and all the exemptions from liability contained in the Water Carriage of Goods Act, 1910.

1. In the event of claim for loss or damage, of whatever nature or [illegible] on whatever cause, for which the carrier may be liable, it is mutually agreed that the liability of the ship, and/or carrier for the loss, and/or damage, shall be based upon the net invoice value of the merchandise at the port of shipment, without any profit, commission, brokerage, interest, etc. It is also mutually agreed that the value of each package shipped hereunder does not exceed the sum of $100.00, on which basis the freight is adjusted, and the carrier's liability shall in no case exceed that sum, unless a value in excess thereof be specifically declared and stated herein and extra freight as may be agreed upon paid, and in the event of partial loss, and/or damage for which the carrier may be responsible, the liability to be pro rata to the sum payable in case of a total loss or damage, calculated in accordance with the above conditions.

2. ALSO, that the carrier shall not be liable for articles specified in Section 4281 of the Revised Statutes of the United States unless written notice of the true character and value thereof is given at the time of loading and entered in the bill of lading.

3. ALSO, that shippers shall be liable for any loss or damage to steamer or cargo caused by inflammable, explosive or dangerous goods, shipped without full disclosure of their nature, whether such shipper be principal or agent; and such goods may be thrown overboard or destroyed at any time without compensation.

4. ALSO, that the carrier shall have a lien on the merchandise for all taxes, dues and fines imposed on it, and for all expenses to it resulting from the shipper's failure to furnish proper Consular or Customs House papers in due time, or resulting from other errors or omissions of shippers, and that all such fines and expenses shall be reimbursed to the carrier by consignee before the said property shall be delivered to him.

5. ALSO, in case of the entry of the port of discharge being interdicted, or communication therewith rendering or being liable to render the vessel liable to quarantine at that or any subsequent port, or in case of the master considering the entry of any port, either from epidemic or otherwise, unsafe or injurious to the further prosecution of the steamer's intended voyage, or in case of her preventing the steamer from reaching her port of discharge without delay, the goods may be landed or put into quarantine depot, lazaretto, hulk, lighter or other vessel or place necessary for the ship's despatch, at the Consignee's risk and expense, or the master may carry on the goods to the nearest port to which he is bound and there land them, and thereupon the shipowner's responsibility hereunder shall absolutely cease, and in the event of cargo being re-shipped to original destination from such port at which cargo is landed, the risk of such re-shipment, and all expenses, freight, etc., in connection therewith, to be for account of the owner of the goods. All quarantine expenses upon the goods, of whatever nature, are payable by the shipper or consignee. Also, that in case the ship shall be prevented from reaching her destination by quarantine, ice or blockade, the carrier may discharge the goods into the nearest available and safe depot or lazaretto, and such discharge shall be deemed a final delivery under this contract, and all the expenses thereby incurred on the goods shall be a lien thereon. Should the ship on arrival at destination be unable to enter port or discharging berth on account of ice, or frost, she shall have privilege of proceeding to nearest safe port or berth, and there discharge, freight to be paid the same as if discharged at port or berth to which she was ordered.

6. ALSO, that goods exceeding two tons in weight or measurement shall be liable to pay extra charges, if any for lighter, handling, transhipping or discharging. Also, that the steamer or any of the [illegible] servants of the company shall not be liable for any damage or loss occurring from any accident in lighter, handling, discharging or transhipping of packages exceeding two tons in weight. And in case of any damage or loss resulting to the steamer, cargo, lighters, steam or hoisting tackle, owing to incorrect weight having been declared, the shippers and/or consignees of such cargo shall be responsible for such loss or damage.

7. ALSO, that the steamer shall be entitled to commence discharging immediately on arrival, either in the river or at the quay, and discharge without interruption, and discharge at more than one berth. The goods shall be taken from the ship's tackle by the consignee of the goods directly on their coming to hand in discharging the ship, otherwise the master or ship's agent shall be at liberty to enter and land the goods, or put them in store, warehouse or craft, or on quay, at the receiver's risk and expense, without giving previous notice to consignees before weighing or counting, when the goods shall be deemed delivered and steamer's responsibility ended, but the steamer and carrier to have a lien on such goods until the payment of all such and charges as aforesaid, notwithstanding all customs or regulations of the port of discharge to the contrary. The ship's responsibility shall cease immediately on the goods being discharged from the ship's tackle any custom of the port to the contrary notwithstanding. The Collector of the Port is hereby authorized to grant a general order for discharge immediately after the entry of the ship. The consignees of the cargo to receive same as above stated and wherever the steamer is lying, any custom of the port to the contrary notwithstanding. The master-porterage of the delivery of the cargo is to be done by the consignees of the steamer, at the expense and risk of the receivers of the cargo. Cargo landed without marks, with wrong ones, or wrongly marks, to be apportioned by Ship's agent (or master-porter) among the consignees of cargo whose lots may be short, such apportionment to be accepted by said consignees against shortage. Not accountable for condition of bagging or for sweaty damage. Tonnage and shut dues, and all expenses of measurer, weighing or examining cargo, even for determining amount of freight due on quantity, weight or number delivered, payable by receivers of cargo. Primage payable due to be for account of cargo. Also, that in the case of wood, cake, etc., the vessel shall not be responsible for marks, provided the number and the of bags is correct. Also, that if extra men are put on to assort marks of wood or cake, lumber stowed, etc., the expense thereof to be paid by the Consignee. The goods covered by this Bill of Lading shall be discharged into lighter or lighters at consignee's risk and expense, if, in the opinion of the steamer's agent, such method of delivery is advisable, notwithstanding any other condition in the Bill of Lading which may appear to conflict with this. Merchandise transhipped into vessels, lighters or other conveyance will have to reimburse to the ship, in the same measure as cargo landed on the shore, Chamber of Commerce dues taxes or other expenses in connection therewith, notwithstanding all customs and regulations of the port to the contrary.

8. The owner, [illegible] pursuant to the interpretation of the Bill of lading, may [illegible] part of the [illegible] consideration, shall be under no obligation to keep and/or load on [illegible] any [illegible] goods shipped by it in bulk shall, in the ordinary course of business, be mixed with goods of other shippers, such mixing shall not constitute a ground for delay [illegible] and the shipowner reserves the said goods for its own account, at the risk of, and all expenses [illegible] to be borne by the shippers and/or owner thereof. The carrier also [illegible] right to use [illegible] for the purpose of [illegible] and for the discharge [illegible] goods.

9. ALSO, that if any [illegible] of goods, [illegible] by freight and charges, the proceeds [illegible] such freight and charges, if any, shall be applied to reduce the aforesaid loss the [illegible].

10. ALSO, that full freight is payable on damaged or unsound goods; but no freight is due on any increase in bulk or weight caused by the absorption of water during the voyage.

11. ALSO, freight payable on barrels delivered full, partly full or empty.

12. ALSO, the steamer shall not be liable for splits, shakes or breakage to lumber or logs.

13. ALSO, that where goods is stowed together with other goods without separation, either [illegible] the owner of [illegible] agent, each Bill of Lading shall bear its proportion of loss and/or [illegible].

14. ALSO, all [illegible] on shore or in lighter awaiting shipment or delivery be at shipper's risk of loss or damage not happening through the fault or negligence of the owner, master, agent or servants of the company as provided by law of the country [illegible].

15. ALSO, that this Bill of Lading, duly endorsed, be given up to the steamer's consignee in exchange for delivery order.

16. Prepaid freight is to be considered as earned upon shipment of the goods and is to be retained by the vessel owners, vessel or cargo lost or not lost at any stage of the entire transit, or if there be an enforced interruption or abandonment of a voyage or a part of thereof or elsewhere, and, in the event of the cargo or a part of it, being intercepted by vessels of the same or any other line, rate of forwarding shall be payable by the owners or consignees of the goods and shall constitute a lien on the goods.

17. ALSO, that if any bags of grain, coffee, cocoa, or similar cargo in bagged shall or lost, the consignee shall accept such proportion of the consignee as shall be allowed by the agents of the Steamship and the same shall be delivered in full satisfaction of any claim for loss in weight.

18. TRANSHIPMENT CLAUSE.—Transhipment of cargo for ports where the ship does not call, or for shipowner's purposes may be made by any other steamer or steamers to which as the shipowner deems it the shipowner's expense and subject to all conditions, stipulations and exceptions in the customary form of bill of lading or freight note in use at the time of the transhipment by the carrier or carriers completing the transit. The shipowner is not, and shall not be deemed to be the agent for such carrier or carriers nor shall the shipowner be liable in any regard whatever for any loss, damage or delay in regard to the goods other than may shall have left the shipowner's vessels and, in such cases the shipowner's responsibility shall cease. The goods shall be forwarded as soon as practicable, but the shipowner shall not be liable for detention[illegible] or even as [illegible] and the shipowner shall not be liable for detention and the risks and expenses of transhipping shall be borne by the goods, their owners and their consignees.

19. ALSO, owing to the conditions of war or hostilities, existing or threatened, this shipment is accepted at the sole risk of the owners thereof of arrest, restraint, capture, seizure, detention or interference of any sort by any Power; and the carrier and his representatives are privileged at his or their absolute discretion if deemed advisable for the protection of the vessel or any cargo or to avoid loss, damage, delay, expense or other disadvantage or danger, either with or without previous to or toward the port of discharge or calling or attempting to enter or discharge the goods there, and whether such entry or discharge be prohibited or not, to proceed to any other port or ports or return to the port of shipment, same or elsewhere, in any order or rotation, retaining the goods on board or discharging the same at risk and expense of the owners thereof at any such port or ports of the first or any subsequent call, and full bill of lading freight, together with extra compensation for additional transportation and all other charges, shall be paid by shipper, consignee and/or owner and shall be a lien on the goods.

20. PANAMA CANAL CLAUSE.—The steamer shall have liberty to proceed the Panama Canal, Straits of Magellan, or other route or routes and to change, proceed or return once or oftener from one to another; also to transship the goods through the Panama Canal or across the isthmus by railroad, craft or conveyance of any kind, by land or otherwise, by land and/or water, and to store and/or forward the same in hold, craft or elsewhere afloat or ashore and there transport or forward the same by the same or other vessel or carrier; also if steamer's passage through the Panama Canal is, or in the judgment of owner, master or agent is likely not to be immediately practicable without delay on arrival the goods may with or without proceeding to or toward the harbour be reshipped to and/or discharged at port of shipment or the harbour or other port convenient to the steamer, the voyage and carrier's responsibility being ended without notice or care of the goods here the ship's tackle, or the goods thence transported or transhipped to destination at steamer's expenses.

21. LONDON CLAUSE. (a) The shipowners shall, at their option, be entitled to land the goods while mentioned on the quay, or to discharge them into craft or lighters by them, immediately on arrival, and at consignee's risk and expense the shipowner being relieved of all liability for the same charges on goods entered for landing at the docks or on goods entered for delivery to lighters. Consignees desirous of conveying their goods elsewhere shall, on making application to the ship's agents, or to the dock company within 72 hours after steamer shall have been reported, be entitled to deliver into consignee's lighters at the following rates to be paid with the freight to the ship's agents against release, or to the dock company, if so desired by the ship's agents, viz: Following [illegible] goods in packages, timber pegs, goods handled inland rollers, bale, [illegible] wheels and cars, 1/3 per ton measurement; bags, 2/6 per ton weight; timber and logs, 1/- per ton measurement, or 2/6 per ton weight at ship's option, all other general cargo except those, 1/6 per ton weight or measurement at ship's option, minimum charge one ton. Those to pay 2/- per ton weight. Cheese may also be removed by consignee's own vessels any week other than that which they have been reported, subject to a 10% payment of 2/6 per ton weight, such ton to be taken loose in any and shipped weight weighing over one ton to be subject to extra charges for handling if insisted. All unmanifested freight to be paid upon the weight stated hereby or at ship's option upon being weighed if [illegible] has been ascertained, the cost of weighing to be a charge upon the goods. All deliveries of bagged and logs shall be considered as a weight note will be given for freight on the ordered weights forwarded at port of shipment. No allowance will be permitted in any weight or freight indicated in this Bill of Lading except at ship's option.

(b) Goods by consignee delivery is to be applied for within 24 hours of ship's docking, or thereafter [illegible] 24 hours notice, but in the absence of sufficient consignee's craft with reasonable promptitude to receive as fast as ship can discharge available into lighters during dock working hours, the consignee or agent may hire or discharge into lighters at the risk and expense of the consignee. The shipowner may land or discharge continuously day and/or night, any goods landed or discharged by ship's consignees during usual dock hours, consignee's craft being duly in attendance, and any goods that may be landed or discharged before or after usual dock hours, whether craft are in attendance or not, to be in charge of them by consignee's dock watchmen for which [illegible] 72 hours free of landing or discharge, afterwards it will be subject to the usual dock charges. An extra freight of 5d. per ton shall be paid by the shipowner on such consignments of goods whether any portion be landed or not. The goods to be weighed at time of discharge, either on dock and to quay and/or craft, at ship's option. Working out charges (including weighing) as fixed by the Port of London Authority for grain in both and/or steamer's tops to be paid by the consignees with the freight to the ship's agents or to the dock company, if so demanded by the ship's agents, in exchange for release.

(c) DAY, ILLUMINATING AND LIGHTERAGE OR CLAUSE. Consignees to have such in attendance immediately on ship's docking to take delivery from ship or quay at shipowner's option, working continuously day and/or night, quay to quay rate 1/6 per ton weight, or otherwise the goods will be put into consignee's craft, craft or wharfowner's risk and expense.

Dock [illegible] use by shipowners of [illegible] dock steam cranes and [illegible] shall rest free of demurrage their regular term to receive goods or goods as required by shipowners, either from [illegible] or quay or craft[illegible] goods.

These [illegible] clauses [illegible] to be a part of the Bill of lading, and any words or [illegible] with them are hereby cancelled.

22. SPAIN.—All duties stamps or which may be established by the Spanish Government on account of the consignments or upon the sum of Customs at port of destination.

23. ALSO, all differences or disputes arising out of or relating to the interpretation or to the execution of the present Bill of lading, and the claim thereof, will, by express agreement and even in case of appeal for necessity or of plurality of defendants, be judged in accordance with the decision of the arbitrators sitting in the Tribunal of Commerce of the Seine, the [illegible] of [illegible] shall [illegible] the [illegible] and [illegible] companies and except, and [illegible] [illegible] is hereby expressly given.

LIBELANT'S EXHIBIT NO. 18.
"THE GUIDE" ADVERTISEMENTS RE VOYAGES OF
VESSELS IN EUROPEAN-PACIFIC LINE,
June 7, 1919, to January 6, 1920.

1. S. S. "WEST ALETA" (1st voyage) was advertised continuously

For	From	To
Copenhagen direct	June 23, 1919 (first ad.)	August 8, 1919. (last ad.)

2. S. S. "CANSUMSET" was advertised continuously

For	From	To
Liverpool direct	June 23, 1919 (first ad.)	August 25, 1919 (last ad.)

3. S. S. "EELBECK" was advertised continuously from July 17, 1919 (first ad.) to Sept. 5, 1919 (last ad.) as follows:

From	For	From	To
Seattle and Portland	London and Liverpool	July 17, 1919	Aug. 23, 1919
San Francisco	London and Liverpool	Aug. 9, 1919	Sept. 5, 1919

4. S. S. "WEST CAYOTE" was advertised continuously

For	From	To
London and Havre	July 18, 1919 (first ad.)	Sept. 6, 1919 (last ad.)

5. S. S. "WEST KATAN" was advertised continuously

For	From	To
London and Havre	August 5, 1919 (first ad.)	Oct. 17, 1919 (last ad.)

6. S. S. "ORANI" was advertised continuously from August 25, 1919 (first ad.) to October 28, 1919 (last ad.) as follows:

From	For	From	To
Seattle and Portland	Liverpool direct	Aug. 25, 1919	Sept. 12, 1919
San Francisco	Liverpool direct	Aug. 25, 1919	Sept. 10, 1919
San Francisco	Liverpool and Glasgow	Sept. 11, 1919	Oct. 4, 1919
San Francisco	London and Liverpool	Oct. 6, 1919	Oct. 15, 1919
San Francisco	Liverpool and Glasgow	Oct 16, 1919	Oct. 28, 1919

7. S. S. "DEWEY" was advertised continuously from Sept. 11, 1919 (first ad.) to November 12, 1919 (last ad.) as follows:

From	For	From	To
Seattle and Portland	Liverpool direct	Sept. 11, 1919	Sept. 12, 1919
Seattle and Portland	London and Liverpool direct	Sept. 13, 1919	Sept. 30, 1919
San Francisco	London and Liverpool	Sept. 13, 1919	Oct. 4, 1919
San Francisco	London and Glasgow	Oct. 6, 1919	Oct. 15, 1919
San Francisco	London and Liverpool	Oct. 16, 1919	Nov. 12, 1919

8. S. S. "EFFINGHAM" was advertised continuously from October 16, 1919 (first ad.) to December 16, 1919 (last ad.) as follows:

From	For	From	To
Seattle and Portland	Antwerp and Hamburg	Oct. 16, 1919	Oct. 21, 1919
San Francisco	Antwerp and Hamburg	Oct. 16, 1919	Oct. 21, 1919
Seattle and Portland	Havre, Antwerp and Hamburg	Oct. 22, 1919	Oct. 29, 1919

San Francisco	Havre, Antwerp and Hamburg	Oct. 22, 1919	Oct. 29, 1919
Seattle and Portland	London, Liverpool and or Havre and Hamburg	Oct. 30, 1919	Nov. 3, 1919
San Francisco	London, Liverpool and or Havre and Hamburg	Oct. 30, 1919	Nov. 3, 1919
Seattle and Portland	London, Liverpool and Havre	Nov. 4, 1919	Nov. 18, 1919
San Francisco	London, Liverpool and Havre	Nov. 4, 1919	Nov. 18, 1919
San Francisco	Hamburg, London and Liverpool	Nov. 19, 1919	Dec. 16, 1919

9. S. S. "COCKAPONSET" was advertised continuously from October 30, 1919 (first ad.) to December 24, 1919 (last ad.) as follows:

For	From	To
Antwerp, Rotterdam and or Havre and Hamburg	Oct. 30, 1919	Nov. 3, 1919
Antwerp, Rotterdam, Hamburg	Nov. 4, 1919	Nov. 18, 1919
Havre, Antwerp and Rotterdam	Nov. 19, 1919	Dec. 24, 1919

[Endorsed]: United States District Court. No. 17,692. Libelant's Exhibit No. 18. Filed Jan. 6, 1925. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

No. 4748. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jan. 4, 1926. F. D. Monckton, Clerk.

CHARTS

TOO
LARGE
FOR
FILMING

January 20, 1920.
500 HFH: M.

Division of Operations,
United States Shipping Board,
369 Pine Street,
San Francisco, Calif.

Gentlemen:—

SS. "West Aleta."
Hamburg Bill of Lading #34:

This bill of lading originally covered a shipment of 2200 bags of rice on which the freight charges were assessed as follows:

222200# @ $2.25 per 100# $4999.50.

After the vessel had sailed the shippers surrendered the original document and at their request we have issued new bills of lading as follows:

34A—1100 Bags—111100# @ $2.25 per 100# $2499.75

34B— 550 Bags— 55550# @ $2.25 per 100# $1249.87

34C— 550 Bags— 55550# @ $2.25 per 100# $1249.88

These bills of lading all show Rosenberg Brothers & Company as the shippers. Bill of lading 34A is consigned to Order, Notify, Mr. Max N. Koester; bill of lading 34B is consigned to Order, Notify Mr. Geber Brady and bill of lading 34C is consigned to Order, Notify Messrs Uszczek and Grimpe.

We have notified the agent at destination of these corrections and would thank you to see that your copies of the freight papers are changed accordingly.

We are enclosing two copies of each corrected bill of lading to replace the documents already sent you.

January 20, 1920.

Division of Operations,
San Francisco, Calif.

#2—

Hamburg bill of lading #54 originally covered a shipment of 1100 bags beans. After the vessel had sailed the shippers surrendered the original document and at their request we split this shipment into two lots.

Bill of lading 54A for 141 bags—14241#
@ $2.30 per 100# ..... $ 327.54

Bill of lading 54B for 959 bags—96859#
@ $2.30 per 100# 2227.76

Both of these lots show Rosenberg Brothers & Company as shippers; bill of lading 54A being consigned to Order, Notify L. Behrens & Soehne and bill of lading 54B being consigned to Order, Notify C. Boecker & W. Berkefeld.

We have notified the agent at destination of these corrections and would thank you to see that your documents are changes accordingly.

We also enclose two copies each of the corrected bills of lading which are to replace the bills of lading previously delivered to your office.

Yours faithfully,
WILLIAMS, DIMOND & CO.,
By H.,
Managers and Operators.

Bill No.	Shipper	Marks	Consignee	No. Pkgs.	Articles	Weight	Rate	Freight	Adv. Chgs.	Total	Payable	Remarks

...District Court
No. 12692
Respondent's Exhibit No. C
Dec. 29, 1924
H. H. MALING, Clerk
...Deputy Clerk

RECAPITULATION

S. S. WEST ALSEA
VOY 51

	WEIGHT	CU FT	SH FT	FREIGHT	PREPAID	COLLECT
SEATTLE TO HAMBURG	739139	119		6154.51	6154.51	
SEATTLE TO ROTTERDAM	6...68		76895	20054.59	20054.59	
SEATTLE TO CARDIFF			736134	13568.04	13568.04	
SAN FRANCISCO TO HAMBURG	8001939	345		40599.60	40599.60	
SAN FRANCISCO TO ROTTERDAM	2375084			22913.514	22909.13	384.38
SAN FRANCISCO TO CARDIFF	5609931			119966.38	119966.38	
TOTAL	10950961	464	1029987	255176.45	253...07	384.38

CERTIFIED TO BE A FULL AND TRUE STATEMENT OF ALL CARGO LADEN AND THAT RATES ARE CORRECT AND AUTHORITY FOR WHICH ARE PACIFIC COAST EUROPEAN TARIFF NO. 24 WITH SUPPLEMENTS NOS 3 AND 4.

WILLIAMS DIMOND & COMPANY
MANAGERS AND OPERATORS

BY _____
MEMBER OF FIRM.

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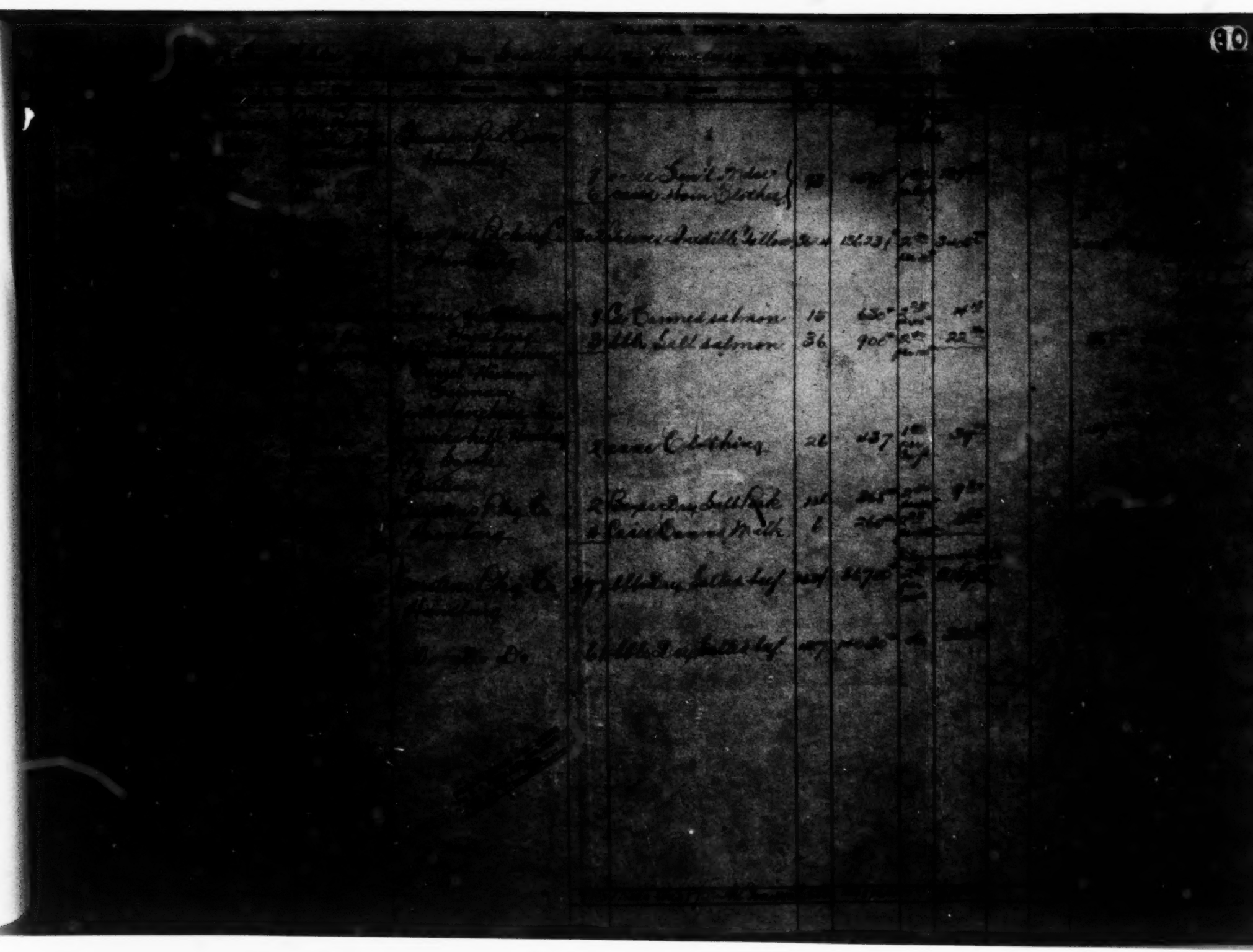

Dec 19[illegible]

WILLIAMS, DIMOND & CO.

S.S. Nant Celta Voy. 51 From Seattle, Wash. For Cardiff. Sailed Dec. 19th 1917 Arrived 19 Sheet No. 92

B/L No.	Shippers	Marks	Consignees	No. Pcgs.	Articles	Weight	Rate	Freight		Adv. Chgs.	Total	Prepaid	Remarks
601-S	G.R. Crowley	A Crown	C/O Hunt Bros & Co Cardiff, Wales	3593	Hard wood Timber	49454 lbs 22.15 M.	Cardiff London	2846.87			2846.87	2846.87	Ships not responsible for shifting of cargo under deck
601-S	G.J. Ramsey & Co. Abertridwr Aut	Ramsey	Care G.J. Ramsey & Co. Cardiff. Ltd G.J. Ramsey & Co. London Eng	1431	Do Do	9.945 22.15 M.	Do	5.67			591.75	591.75	Do
602-S	Do Do	Do	Do Do	1213	Do Do	5041 22.15 M.	Do	287.37			150.00	150.00	Do
				Cargo	4687 mos Timber	270.21.13		2613.7 22.15 M.			1355.62	1355.62	

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WILLIAMS, DIMOND & CO.

S. S. WEST ALETA Voy. 91 From SAN FRANCISCO For [illegible] Sailed [illegible] 1919 19 Arrived 19 Sheet No. 93

B/L No.	Names	Marks	Consignees	No. Pcks.	Articles	Gross Weight	Rate	Freight	Adv. Charges	Total	Remarks
1	CARL KLAGE	ADDRESSED	[illegible]	1	[illegible]	95	[illegible]	[illegible]		[illegible]	
2	BENJ. ROTHBACH	DO	CARL LUDWIGER DIRSCHAU, POLAND	1	DO DO	66	[illegible]	[illegible]		[illegible]	
3	SAMUEL SHUP	DO	FRAU HETTIE HOWES [illegible]	1	DO DO	199	[illegible]	[illegible]		[illegible]	
4	BENJ. ROTHBACH	DO	HERR LEINGTHER, ELOTHOFF, POLAND	1	DO DO	67	[illegible]	[illegible]		[illegible]	
5	MARCUS FEINBERGER	DO	ANNETTE GOLDFISHER, [illegible]	2	DO [illegible]	98	[illegible]	[illegible]		[illegible]	
6	HAAS BROS	DO	[illegible]	1	DO [illegible]	6	[illegible]	[illegible]		[illegible]	
				1	DO [illegible]		[illegible]	[illegible]			
				1	DO [illegible]		[illegible]	[illegible]			
				1	DO [illegible]		[illegible]	[illegible]			
				1	DO [illegible]		[illegible]	[illegible]			
				1	DO [illegible]		[illegible]	[illegible]		[illegible]	
7	CARL KALTEA	DO	CHRISTIAN [illegible]	1	DO [illegible]	200	[illegible]	[illegible]		[illegible]	
8	HERMAN GUMPEL	DO	SAMUEL GUMPEL, BRESLAU 1/20	6	DO [illegible]		[illegible]	[illegible]		[illegible]	
				10	DO [illegible]		[illegible]	[illegible]			
				1

WILLIAMS, DIMOND & CO.

S. S. [illegible] Voy. 50 From [illegible] For [illegible] Sailed 19 [illegible] Arrived 19 [illegible] Sheet No. [illegible]

B/L No.	Shipper	Marks	Consignee	No. Pkgs.	Articles	Cubic Feet	Weight	Rate	Freight	Adv. Chgs.	Total	Prepaid	Remarks
	BROUGHT FORWARD					931	399971		$9949.52		$9949.52	$9949.52	
31	[illegible] PINE CO/ INC.	VARIOUS	[illegible] & Co. [illegible]	100	CS CALIFORNIA PINE		97.0	2.00	194.00				
				150	1000 BDL. CALIFORNIA PINE		79.000	7.90	1950.00		2108.00	2108.00	
29	[illegible] BAUTH[illegible]	ADDRESSED	[illegible]		CS BUTTER								
					CS [illegible]		42	MIN.	10.00		10.00	10.00	
					CS [illegible]		44						
					CS COFFEE								
					CS CANNED MILK								
33	B. C. BREMER	do	H. BREMER, ALTONA		CS MARGARINE		469	MIN.	10.00		10.00	10.00	
34	C. H. WHITNEY COMPANY	do	[illegible]		CS [illegible] PASTE								
					CS SOUP								
					CS [illegible]								
					CS C.C.C.								
					CS CHOCOLATE								
					CS Cod. Fish & Milk								
					CS MISC								
					CS Cod. Fish & Dried								
					CS Cod. Herring								
					CS Cod. Tongues								
					CS Mixed Groceries								
35	C. H. WHITNEY COMPANY	do	[illegible]		CS MARGARINE PASTE								
					CS SOAP								
					CS [illegible]								
					CS [illegible]								
					CS CHOCOLATE								
					CS [illegible]								
					CS [illegible]								
					CS Cod. Fish & Dried								
					CS MISC								
					CS Cod. Fish & Dried								
					CS Cod. Tongues								
					CS Mixed Groceries								
36	J. GROSER	VARIOUS	[illegible]		CS GROCERIES								
					CS GROCERIES								
37	[illegible]	V. O. [illegible]	[illegible]		CS PEPPER & [illegible]								
					CS [illegible]								
					CS [illegible]								
					CS

WILLIAMS, DIMOND & CO.

S. S. WEST ALETA Voy. 50 From SAN FRANCISCO For HAMBURG ✓ Sailed 19— Arrived 1910 Sheet No. 35

B/L No.	Shipper	Marks	Consignee	No. Pkgs	Articles	Cubic Feet	Weight	Rate	Freight		Adv. Charges	Total	Prepaid	Remarks
	BROUGHT FORWARD					269	478711							
32	CALIFORNIA WINE ASSOCIATION	ADDRESSED	ORDER NTFY. HEINRICH EDELMANN LILIENTHAL, BEI DAMEN, GERMANY	9	BBLS. CAL. WINE		1500	2.40	36.00			36.00	36.00	
33	H. H. KOHLTMANN	DO	H. PILLY HOLST, EISENBAHNS	1	CS. USED CLOTHING	12		1.40%	CFT. 19.50			19.50	19.50	
34	ROSENBERG BROS. & CO.	S T 357	ORDER NTFY. MESSRS. G. SCHEIER & SCHEFFELD HAMBURG	2200	DOUBLE BAND RAGS SOMETHINGS		207800	2.25	4999.50			4999.50	4999.50	Loss [illegible]
35	DO	S E 348	ORDER NTFY. MESSRS. G. SC.	1400	DO		111600	2.25	2499.75			2499.75	2499.75	
36	DO	S L 349	DO	1400	DO		111600	2.25	2499.75			2499.75	2499.75	
37	U. S. STEAM CO.	F. A. CO. 5695	ORDER NTFY. FERD ASSMUSEN & CO. COPENHAGEN	500	DO		59400	2.25	1138.50			1138.50	1138.50	
38	STRONG BROLL & CO.	H. P. C/O AUGUST DOHSE HAMBURG	AUGUST DOHSE, EISENBAHNEN U. SCHIFFAHRTS AGENTEN HAMBURG	1 1 1 1 1 1 1	CS. CANNED BEAN CS. CANNED SALMON CS. JAMS CS. CANNED CS. SOAP CS. RICE CS. CANNED PEAS	9 9 9 9 40		2.40 2.25						
39	ROSENBERG BROS. & CO.	S E 357	ORDER NTFY. MR. L. SCHEIER HAMBURG	2200	DOUBLE BAND RAGS		207800	2.25	4999.50			4999.50	4999.50	
40	DO	S E 350	ORDER NTFY. G. SCHEIER & SCHEFFELD HAMBURG	1400	DO		111600	2.25	2499.75			2499.75	2499.75	
41	DO	S E 356	ORDER NTFY. ROSEN & SCHEFFEL	1400	DO		111600	2.25	2499.75			2499.75	2499.75	
42	DO	S E 356	DO	500	DO		59400	2.25	1138.50			1138.50	1138.50	
43	DO	S E 470	DO	1 1 1 1 1 1 1	CS. CANNED BEAN CS. CANNED SALMON CS. JAMS CS. CANNED CS. SOAP CS. RICE CS. CANNED PEAS	9 9 9 9 40		2.40 2.25						
44	DO	S E 470	DO	2200	DO		207800	2.25	4999.50			4999.50	4999.50	
45	DO	S E 340	DO	1400	DO		111600	2.25	2499.75			2499.75	2499.75	
46	SPERRY FLOUR COMPANY	ALTONA OFFICE	ORDER NTFY. G. VON HEIDEN	1	BBL. FLOUR		200	2.25	4.50			4.50	4.50	
47	WM. L. SPRAGUE	BENTSONE SCHIFFAHRTS	OTTMER, SCHILDS & SCHLOSSPLATZ	1	CS. MERCHANDISE	21		1.40%	CFT. 29.43			29.43	29.43	
48	AUGUST DANIEL	P DANIEL 1/3	P DANIEL BERLIN GERMANY	1	DO	9		1.40%	CFT. 12.60			12.60	12.60	
49	HAAS BROTHERS	ADDRESS	FRAU JACOB STEINLEN SPITTLERSTRASSE 5 HAMBURG GERMANY	1 1 1 1 1 1 1	UPPER FLOOR CS. CANNED TOMATOES CS. CANNED PEAS CS. CANNED STRING BEANS CS. RICE CS. CANNED BEANS	150 [illegible]								
50	DO	ADDRESSED	F. THIEST & SONS HAMBURG DAFFINS	1 1 1 1 1 1 1	UPPER FLOOR CS. CANNED TOMATOES CS. CANNED PEAS CS. CANNED STRING BEANS CS. RICE CS. CANNED BEANS	150 [illegible]		10%	10.00			10.00	10.00	
51	DO	ADDRESSED	FRAU JACOB HAAS AUGUSTA ANLAGE 44 HAMBURG GERMANY	1 1 1 1 1 1 1	UPPER FLOOR CS. CANNED TOMATOES CS. CANNED PEAS CS. CANNED STRING BEANS CS. RICE CS. CANNED BEANS	150 [illegible]		10%	10.00			10.00	10.00	
52	C. L. JONES & COMPANY	ADDRESSED	C/O JOSEPH HERRADNER HOTEL BRISTOL BERLIN GERMANY	1	CS. SAMPLES, TIN, P SEE COPPER CANS, BOOKS, BEANS, WIRE, JARS, BEANS, POWDER	10	100	3.75	3.75			3.75	3.75	
53	BARBARA ROSENBERG BROS. & CO.	S D 357	ORDER NTFY. G. SCHEIER & SCHEFFELD HAMBURG	999	BAGS TEXTILE BEANS		99899	2.50	2497.25			2497.25	2497.25	
54	DO	S S 347	DO	1400	DO		111600	2.50	2791.50			2791.50	2791.50	Loss [illegible]
55	DO	S M 346	DO	1400	DO		111600	2.50	2791.50			2791.50	2791.50	
						269	478711		[illegible]			[illegible]	[illegible]	
									37946.10			37946.10	37946.10	

WILLIAMS, DIMOND & CO.

S. S. WEST ALETA Voy. 51 From SAN FRANCISCO For HAMBURG Sailed JANUARY 7TH 19 19 Arrived 19 -- Sheet No. 96

A/C No.	Shippers	Marks	Consignees	No. Pkgs.	Articles	Gross Weight	Rate	Freight	Ass'd Chgs.	Total	Forwarded	Remarks
			BROUGHT FORWARD									
56	ROSENBERG BROS & COMPANY	S S 498	ORDER NOTIFY BANNE & HAASE	595	BAGS RICE	57185						
				50	"	4836	2.25	904.84		904.84	904.84	
57	"	S S 498	"	500	"	50900	2.25	1136.25		1136.25	1136.25	
58	"	S S 498	"	500	"	57900	2.25	1248.75		1248.75	1248.75	
59	"	S S 498	"	500	"	57900	2.25	1248.75		1248.75	1248.75	
60	HANS TAUBERT	ADDRESSED	LEO TAUBERT, HAMBURG	1	BX GROCERIES	200	MIN.	10.00		10.00	10.00	
61	O. ROTHE	ADDRESSED	A. AUSTNER, HAMBURG	1	BX SUGAR	100						
				1	BX DRIED FRUITS	20	2.50	2.75				
				1	BX SO MILK	60	2.10	1.26				
				1	BX SOAP	20						
				2	BX CEREALS	200	2.50	5.75				
				1	BX RICE	75	2.25	.68				
				1	CHT LARD	50	2.40	1.20				
				1	BX WHEAT FLOUR	100	2.15	2.15		15.07	15.07	
62	HAAS BROS.	ADDRESSED	E.T.PHIELMANN, BERLIN	3	CS TYPEWRITER BOOKS CLOTHING	19		1.625	24.38	24.38	24.38	
63	HAS HANNOVER	ADDRESSED	ARNO HAUPICH, SARA Rubber	2	BX MERCHANDISE	7		1.625	11.38	11.38	11.38	
64	DEUS VAN DIELEN & COMPANY	D E S 25	ORDER NOTIFY UNITED EXPORT CO	1480	BAGS RICE	149480			WEIGHT & CHGS AHEAD O/L CO.,COPENHAGEN VOY 50			
65	ROSENBERG BROS & COMPANY	D E 115	FEAD. ANDERSON & CO.,COPENHAGEN	154	CO	15708			WEIGHT & CHARGES AHEAD O/L CO.,COPENHAGEN VOY 5			
				585								
						2,001,939						

WILLIAMS, DIMOND & CO.

S. S. [illegible] Voy. [illegible] From [illegible] For [illegible] Sailed 19[illegible] Arrived 19[illegible] Sheet No. 97

B/L No.	Shipper	Marks	Contents	No. Pcs.	Articles	Weight	Rate	Prepaid		Adv. Charges	Taxes	Freight	Remarks
1	CALIFORNIA CANNERIES CO.	827 ROTTERDAM	ORDER. NOTIFY [illegible]	1 125 60 5	Cs. CANNED PEARS Cs. CANNED PEARS Cs. CANNED [illegible] Cs. CANNED PEARS	1400 7750 3750 550	1.00	247.50			247.50	247.50	
2	GATZ AMERICAN COMPANY INC	G P C G R C R	ORDER NOTIFY GATZ BROS.	2000	[illegible] BAGS CAL. APP PEAS	240000	2.40	4040.00			4040.00	4040.00	
3	CALIFORNIA FRUIT ASSOCIATION	P R ROTT BUAS 2501 2000	ORDER NOTIFY PLUMS & PEAR LTD.	500	1/2 Cs. CAL. PEAR	24000	2.75	1646.27			1646.27	1646.27	
4	CALIFORNIA FRUIT ASSOCIATION	P R GENOVA VIA ROTTERDAM I 108	ORDER NOTIFY PLUMS & PEAR LTD.	500	1/2 Cs. CAL. PEAR [illegible]	40000	2.35	1175.00			1175.00	1175.00	
5	ALBERT BALS. MILLING CO.	P. V. ARNHEM VIA ALBERTS A/B DELFT	ORDER/ALBERT BROS. MILLING CO. NOTIFY P N/ AMSTERDAM	300	Cs. ALBERTS ROLLED OATS	9000	2.25	202.50			202.50	202.50	
6	ROSENBERG BROS. & CO.	I Z 199	ORDER NOTIFY BACHMANN & ROTHSCHILD	500	[illegible] BAGS RICE	50000	2.00	1000.00			1000.00	1000.00	
7	ROSENBERG BROS. & CO.	I Z 199	ORDER NOTIFY BACHMANN & ROTHSCHILD	500	[illegible] BAGS RICE	50000	2.00	1000.00			1000.00	1000.00	
8	ROSENBERG BROS. CO.	W. V. 276	ORDER NOTIFY BACHMANN & ROTHSCHILD	440	SAK RICE	44000							[illegible] ASSIGNMENT [illegible] TO THE ORDER OF [illegible] AND B/L TO BE [illegible] TO ORDER.
9	D. GOMBARG JR.	B F I [illegible]	[illegible]	8	BOXES OIL HIDES	400							
10	ROSENBERG BROS & CO.	I Z 343	ORDER NOTIFY BACHMANN & ROTHSCHILD	250	BAGS RICE	24000	2.00	480.76			480.76	480.76	
11	THE SAMUEL COMPANY	LEO SCHMAL JANSSTR 252 40	ORDER PD. PLUMS PLEASE NOTIFY ROTTERDAM	4 6	Cs. SWEET WINE Cs. DRY WINE	240 360	0.27	33.48			11.47	11.47	
12	CALIFORNIA FRUIT ASSOCIATION	P R ROUT 1101 50 1 5050	ORDER NOTIFY PLUMS & PEAR LTD. ROTTERDAM HOLLAND	700	BALS. CAL. PEAR	35000	2.25	1837.50			1837.50	1837.50	
13	DO	P R 101 300	DO	800	DO	40000	2.25	1837.50			1837.50	1837.50	
14	DO	P R ROTTERDAM	DO	800	DO BAGS	32000	2.25	2201.25			2201.25	2201.25	
15	DO	P R ROTTERDAM	DO	67	BALS. DRIED	2680	2.25	270.75			270.75	270.75	
16	DO	P R ROTTERDAM	DO	800	DO	40000	2.25	2202.50			2202.50	2202.50	
17	DO	P R ROTTERDAM	DO	800	DO	32000	2.25	2202.50			2202.50	2202.50	
18	DO	P R 1300 1740	DO	240	BALS. CAL. PEAR	24000	2.25	1237.50			1237.50	1237.50	
19	DO	P R 301/1000	DO	1000	BALS CAL. PEAR	48000	2.25	2475.00			2475.00	2475.00	
20	S. L. JONES & COMPANY	D P E D P D P E D E D P E E E	ORDER S. L. JONES & COMPANY NOTIFY CANNING BROKERS & CO., AMSTERDAM	25 25 6	DS RAISINS DS RAISINS DS RAISINS	2500 2500 600	2.25	375.25			375.25	375.25	
21	ROSENBERG BROS. & CO.	I Z 343	ORDER NOTIFY BACHMANN & ROTHSCHILD	250	BAGS RICE, PAPER	25000	2.00	375.24			375.24	375.24	
22	GATZ AMERICAN CO.	VARIOUS	SHIPPERS ORDER NOTIFY GATZ BROS	84	DS RAISINS	19975	2.00	354.00			354.00	[illegible]	[illegible]
23	GETZ BROS & COMPANY	LIQUORS	ORDER GETZ BROS & CO., LTD., NOTIFY SEL LIQUORS, AMSTERDAM	40	DS DO SALMON	2400	2.00	55.00			55.00	55.00	
				[illegible]		1,377,264		45,713.27			45,713.27	[illegible]	

[illegible] 45,713.27

22

S. S. WEST ALEXIS Voy. 57-47 From [illegible] For [illegible] Sailed [illegible] 19[illegible] Arrived [illegible] 19[illegible] Sheet No. 98

S.L. No.	Shippers	Marks	Consignees	No. Pcks.	Articles	Weight	Rate	Freight		Advances	Weight	Freight	Remarks
1	PAUL WOODS	S F P & CO	ORDER NOTIFY, AGENT S FRANCISCO	450	CASES FRUIT								
2	CALIFORNIA FRUIT ASSOCIATION	F S [illegible]	ORDER NOTIFY, FRUIT & NUT EXCH.	600	"								
3	"	F S [illegible]	"	1200	"								
4	"	F S [illegible]	"	1200	"								
5	"	F S [illegible]	"	1200	"								
6	"	F S [illegible]	"	1200	"								
7	"	F S [illegible]	"	1200	"								
8	"	F S [illegible]	"	1200	"								
9	"	F S [illegible]	"	1200	"								
10	"	F S [illegible]	"	1200	"								
11	"	F S [illegible]	"	1200	"								
								[illegible]				[illegible]	

CHART

TOO

LARGE

FOR

FILMING

RESPONDENT'S EXHIBIT "E."

SURVEYOR'S CERTIFICATE.

Dated, San Francisco, January 6th, 1920.

This is to Certify That the "WEST ALETA" of 5719 tons gross register, of which G. H. Ewart is Master, has been loaded at this port, under my supervision, with the following cargo destined for Hamburg, Rotterdam, Cardiff via Panama Canal.

Particulars of Cargo.

Hamburg 1123 tons general mdse.
Rotterdam 1671 " " "
Cardiff 3221 " " "

Draft and Freeboard.

Draft forward 19 ft. 7 in. Aft 22 ft. 7 in. Freeboard 8 ft. 9 in.

Allowances ——— ——— ———
In saltwater 19 ft. 7 in. Aft. 22 ft. 7 in. 8 ft. 9 in.

Fuel Supply, Daily Consumption and Av. Speed as Reported.

Quantity and Quality—5542 barrels oil.

Daily Consumption—210. Av. Speed in good weather—10½ Knots.

No. of days fuel—26. Distance to first fuel port—3300.

Water in Ballast Tanks ———Tons. Fresh Water —200 Tons.

Remarks.

947 tons lumber and bean oil taken in at Seattle.

All holds examined where possible and found in good clean condition, bilges reported carefully ex-

amined and found clean, pumps reported in good working order.

The undersigned having this day made final survey of above named vessel certifies that the vessel is very carefully dunnaged and stowed and weights properly distributed, and all hatches battened down with three good dressed tarpaulins on each and that the vessel is, therefore, in every way seaworthy for voyage contemplated.

Surveyed at request of—

WILLIAMS DIMOND COMPANY.

JOHN W. RINDER,

Surveyor.

[Endorsed]: United States District Court. No. 17,692. Respondent's Exhibit "E." Filed Dec. 30, 1924. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

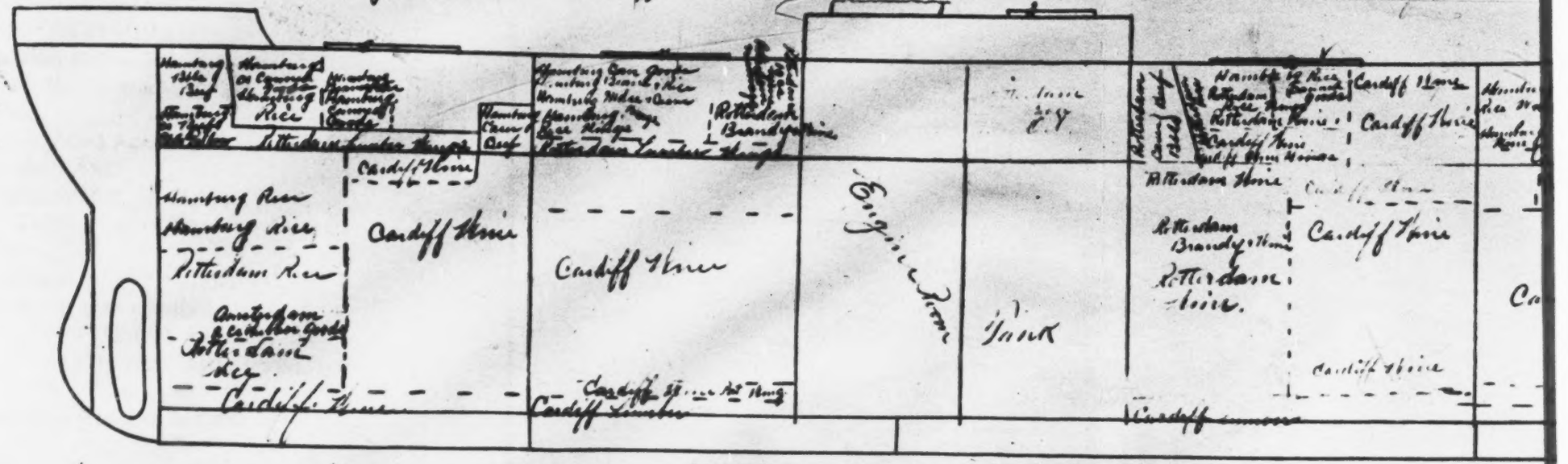
No. 4748. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jan. 4, 1926. F. D. Monckton, Clerk.

DEADWEIGHT 5500 TONS
CUBIC CAPACITY
Bale 415549
Grain 464041
SUMMER DRAFT 24 FT. 1½ IN.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPO

CARGO STOWAGE PLAN S.S. West Aleta VOYAGE 2 SAILING FROM San Francisco DATE

FOR Hamburg Rotterdam Cardiff. OPERATOR Williams Dimond & Co STEVEDORE CO. Calif. Stevedor



INDICATE POSITION OF ENGINES, BULKHEADS BETWEEN HOLDS, 'TWEEN DECKS, AND HATCHES

TOTAL D. W. TONS ON BOARD ON SAILING	Tons
CARGO	5376
WATER BALLAST	360
BUNKERS	773
FRESH WATER	228
DUNNAGE	160
STORES AND SPARE MATERIAL Dunnage	200
TOTAL DEADWEIGHT	6917
TOTAL MEASUREMENT TONS CARGO	

DRAFT WHEN SAILING	Mean
SALT WATER FORE 23 FT. 6 IN. AFT 25 FT. 8 IN.	24' 7"
FRESH WATER FORE FT. IN. AFT. FT. IN.	

REMARKS: West Aleta moored from San Francisco to Point San Pablo 12/29/19 at 3 PM assisted by one tug. Moored at 4 P.M.
Moored from Point Pablo to San Francisco 1/1-20
Arrived at 12 M assisted by One tug.
Space L.D. 250 Tons 1 Holed
" L.H. 175 " " " "
" U.D. 25 " " " "
" U.D. 12 " 5 "

116½ Tons Total

17692

Respondents Exhibit No. F.
Dec. 30, 1924
H. B. MALING, Clerk
J. A. Schwartz Deputy Clerk

RECORD OF TONNA

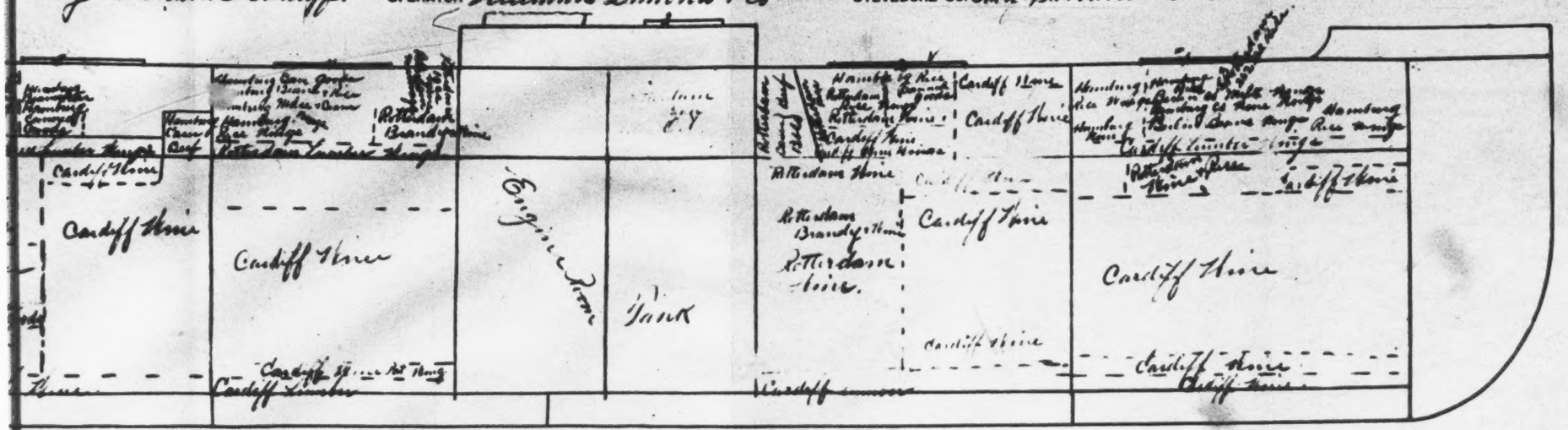
DATE	TONS
12/26 19	
12/29 19	
12/29 19	
12/29 19	
12/30 19	
12/31 19	
1/3 20	
1/3 20	
1/5 20	
1/6 20	

NOTE.—ALL INFORMATION PERTAINING TO CARGO SHOULD BE NOTED UNDER HEADING "REMARKS;" MAKE MENTION OF ALL SINGLE LIFTS WHICH CAN NOT BE HANDLED BY SHIP'S TACKLE, GIVING WEIGHT AND MEASUREMENTS OF SAME; ALL SPECIAL, VALUABLE, DANGEROUS, OR INFLAMMABLE CARGO, AND LOCATION OF SAME; ALSO AVAILABLE FREE SPACE AND WHERE LOCATED.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

STOWAGE PLAN S. S. West Aleta VOYAGE 2 SAILING FROM San Francisco DATE Jan 6 1920

Hamburg Rotterdam Cardiff. OPERATOR Williams Dimond & Co STEVEDORE CO. Calif. Stevedore & T Co



INDICATE POSITION OF ENGINES, BULKHEADS BETWEEN HOLDS, 'TWEEN DECKS, AND HATCHES

REMARKS: West Aleta moored from San Francisco to Pond Str. Pablo 12/29/19 at 3 P.M.
assisted by one tug. Moored at 5 P.M.
Sailed from Str. Pablo to San Francisco 1/2-20
moored at 12 M assisted by One tug.

Space	L.D.	250	Tons	Hatch
"	L.H.	175	"	"
"	U.D.	25	"	"
"	U.D.	12	"	"

461/2 Tons Total

United States District Court
17692
Respondent's Exhibit F.
Dec. 30, 1924
WM. B. MALING, Clerk
J. A. Schmitz Deputy Clerk

RECORD OF TONNAGE HANDLED DAILY

DATE	TONS LOADED	WEATHER
12/26-19	610	Fair
12/27-19	644	"
12/29-19	688	"
12/30-19	670	"
12/31-19	976	"
1/1-20	723	"
1/2-20	398	"
1/3-20	160	"
1/5-20	220	"
1/6-20	30	"

PORT San Francisco PIER No. 25
COMMENCED LOADING Dec 26-19
FINISHED LOADING
SHIFTED to Str. San Pablo Dec 29-19
SAILED

PORT San Francisco PIER No. 25
COMMENCED LOADING 1/2 - 1 P.M.
FINISHED LOADING Jan 6 - 20
SHIFTED to San Francisco Jan 8 - 20
SAILED

PORT PIER No.
COMMENCED LOADING
FINISHED LOADING
SHIFTED
SAILED

ACTUAL TIME CONSUMED IN LOADING
10 DAYS HOURS MINS.
AVERAGE TONS LOADED PER MAN HOUR

NOTE.—ALL INFORMATION PERTAINING TO CARGO SHOULD BE NOTED UNDER HEADING "REMARKS;" MAKE MENTION OF ALL SINGLE LIFTS WHICH CAN NOT BE HANDLED BY SHIP'S TACKLE, GIVING WEIGHT AND MEASUREMENTS OF SAME; ALL SPECIAL, VALUABLE, DANGEROUS, OR INFLAMMABLE CARGO, AND LOCATION OF SAME; ALSO AVAILABLE FREE SPACE AND WHERE LOCATED.

17692
Respdts. Exhibit F.
Sketch of Interior
S/S West Aleta

4748
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT
FILED
JAN 4 - 1926
F. D. MONCKTON,
CLERK.

March 8, 1920.

BILL OF LADING CORRECTION:
SS. "EFFINGHAM"—Voyage 50.

San Francisco—Balboa Bill of Lading #1.
Shipper—W. R. Grace & Co.
Marks—None.
Consignee—Panama Agencies Co.
Shipment—Bulk Oil.

Billed as	5926.69 bbls.	@ 65¢ per bbl....	$3852.35
Out-turn	5773.85 "	" 65¢ " " ...	3753.00
To Be Deducted	152.84 "	"	99.35

Run ticket of out-turn attached.

WILLIAS, DIMOND & Co.
By HOWARD TRUSLOW,
Auditor.

Checked Against Manifest and Found O. K.
C. R. M.,
In Charge of Freight Accounts.

Comptometer—L. M.

Triplicate.

PANAMA AGENCIES COMPANY
FUEL OIL DEPT.

Copy.

Run Ticket No. 713.

Balboa, C. Z. January 1st, 1920.

DIESEL Oil Rec'd at Oil Crib from S. S. "EFFINGHAM" owned by U. S. S. B. E. Fleet. Agents Panama Agencies Co. from tank No. 10 on Thursday 1.1.1920. from 2.00 o'clock P. M., to 9.00 o'clock P. M.

2nd gauge 21 ft. 2¼ in. 17704.95 bbls.
1st gauge 14 ft. 2½ in. 11872.78 bbls.

TEMPERATURE 85 deg. Fahr.
BAUME 26.3 deg.

Gross Oil 5832.17 bbls.
Net Oil @ 60 deg. Fahr. 5773.85 bbls.

ORDER No.....

MARC D. MEZA,
Gauger Panama Agencies Co.
H. E. GREENWOOD,
Gauger "PANAMA CANAL"

.....
Captain S. S. "EFFINGHAM"

.....
Chief Engineer S. S. "EFFINGHAM"

[In pencil:] 3753.00—Freight to Collect. B.

Copy to:
Captain
Owners
Panama Office
San Francisco

5773.85 Bbls.

COPY.

December 1st, 1919.

Messrs. Williams, Dimond & Co.
310 Sansome Street,
San Francisco, Calif.

Gentlemen:

Attention of Mr. Fred Hooper:

CARGO DIESEL OIL PER SS. "EFFINGHAM"

We agree to deliver to the SS. EFFINGHAM at San Francisco approximately 6000 barrels of Diesel Oil to be carried as freight in the vessel's deep tanks to Balboa, C. Z., and there delivered at the Government Oil Crib to Tank No. 10 via Panama Canal Pumps. It is understood that this oil is to be delivered to the vessel at San Francisco at such a time that no delay will be occasioned in loading.

It is understood that freight will be payable at the rate of 65¢ per net barrel on the quantity of Diesel Oil delivered at Balboa as determined by the official gauges of the Panama Canal; also that the ship will pay for any of this oil retained on board at the Shipping Board rate for Fuel Oil at Cristobal on the date of shipment. The vessel will pay for any of this cargo oil consumed as bunkers between San Francisco and Balboa at the established Panama Canal rate for Diesel Oil at Balboa on the date of shipment.

Freight will be payable in San Francisco on receipt of cable advices of the quantity delivered at Balboa.

In the event of a constructive total loss of the vessel and/or cargo mentioned herein, we agree to pay freight on the total net barrels placed on board at San Francisco.

We agree to discharge and take delivery of this oil at Balboa at the rate of 800 barrels per hour, time being calculated from the hour the vessel commences pumping to the hour pumping is completed, failing whch we agree to pay demurrage at the rate of $1.00 per net registered ton per day, it being understood, however, that we will not be required to pay demurrage in the event that there is no actual delay to the vessel in transitting the Canal.

It is mutually understood and agreed that the ship's pumps are to be at our disposal under the direction of the Chief Engineer of the vessel, who is to be instructed by you to co-operate with us and render all possible assistance in expediting handling.

We further agree to reimburse the ship for any port, piloting or wharfage charge incurred directly on account of the fact that the vessel is carrying cargo Fuel Oil and which could not be incurred should the vessel transit the Canal without docking at the Government Oil Crib, Balboa, for the purpose of discharging this cargo oil.

This agreement is subject to the usual clauses of the United States Shipping Board's bill of lading.

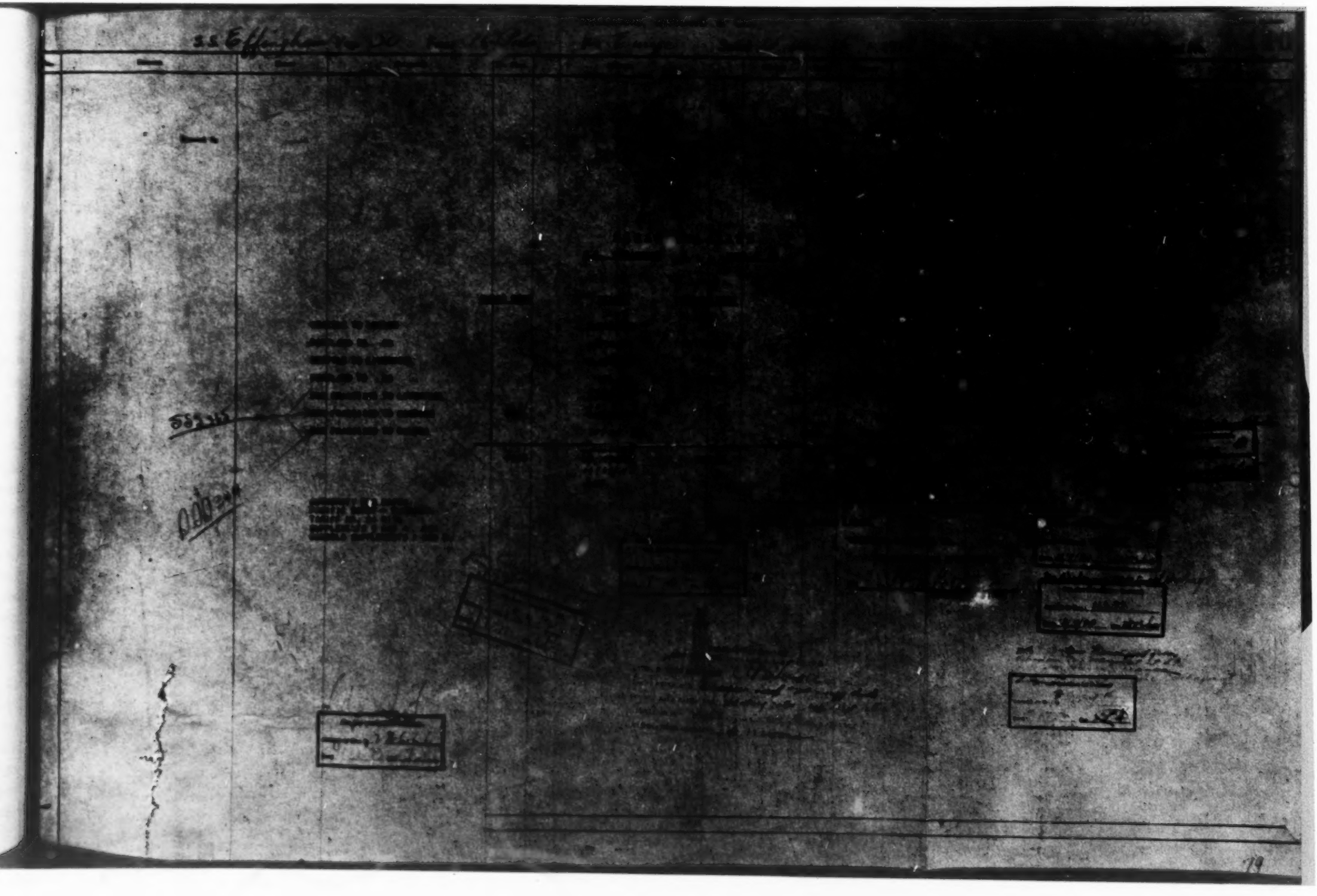
In the event that a berth is not available or we are not in a position to receive oil on the steamer's readiness to discharge we agree to pay demurrage at the rate specified above from the hour the vessel is in readiness to discharge until pumping com-

mences providing, as above, that actual delay in transmitting the Canal is thus occasioned.

We are sending you this letter in duplicate, and request that you sign and return to us one copy, signifying your acceptance of the terms and conditions as contained herein.

Yours very truly,
W. R. GRACE & CO.,
K. WILLIAMS,
Oil Department.

Accepted:
WILLIAMS, DIMOND & CO.
By F. A. HOOPER.



WILLIAMS, DIMOND & CO.

S. S. [illegible] Voy. 1 From [illegible] For [illegible] Sailed [illegible] 19[illegible] Arrived 19 Sheet No. [illegible] 111

Art. No.	Name	Mark	Consignee	No. Pkgs.	Articles	Value	Charges	Amount	Date	Name	Remarks
220-S	Northwestern Fisheries Company	A.A.&Co. London	Order Bks... Shaw & Co.London Bkrs. Robert Irwin & Co. London	1600 1225 400 225 1500	Gs. Red Sal... salmon Belly, packed " unskinned do do do " do do do do do do do do do " do do do do Shackleton	5700 1425 570 225 1500	10.00[illegible] [illegible] [illegible] [illegible] [illegible]				
				800 800	do do do do Sockeye do do do do Imperial	800 800	20.[illegible] 20.00	paid paid			
221-S	do do do	Acct. No. 20.[illegible]	do do do	1500 225	gs. Red Sal... salmon Belly, Sockeye do do do do Pinkfish	1425.0 225	75[illegible] [illegible]	Paid 1424			
222-S	A. Sybert & Company, Inc.	[illegible] 20.[illegible] 2/11/[illegible]	Order Ackyert & Co. London Attn. Robt. Irwin & Co.London In Branch to Shaw	800	do do do do do Sockeye Reds	760	[illegible]	do	456.00		
223-S	do do do	Sp do	do do do	800	do do do do do	760	[illegible]	do	456.00		
224-S	do do do	[illegible] 1000/7000	do do do	800	do do do do do	760	[illegible]	do	456.00		
225-S	do do do	do do	do do do	800	do do do do do	760	[illegible]	do	456.00		
226-S	do do do	[illegible] 2000 [illegible]	do do do	800	do do do do do	760	[illegible]	do	456.00		
227-S	do do do	do do	do do do	800	do do do do do	760	[illegible]	do	456.00		
228-S	do do do	[illegible] [illegible]	do do do	800	do do do do do	760	[illegible]	do	456.00		
229-S	do do do	[illegible] 2000 [illegible]	do do do	800	do do do do do	760	[illegible]	do	456.00		
230-S	do do do	do do	do do do	800	do do do do do	760	[illegible]	do	456.00		
231-S	Libby Mc Neill & Libby	[illegible] 1/000	Order Libby Libby McNeill & Libby, Boston	1000	gs. Sliced Fat Salmon Belly Sliced Libby Brand	1000	[illegible]	do	[illegible]		
				500	Gs. Sliced Fat Salmon Sq. Libby Brand	500	[illegible]	do	[illegible]		
232-S	do do do	[illegible] 1/000	Order Libby, Mc Neill & Libby, Boston Attn. Libby McNeill & Libby Boston	200	Gs. Sliced Fancy Salmon Belle Sliced Fancy	1200	[illegible]	do	[illegible]		
233-S	Northwest Trading Company	[illegible]	Order Trading Northwest Trading Company, [illegible]	1 1 1	Ser [illegible] series " Grand Artwork " Jewel Agates	25	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
234-S	Bowell & Company, Ltd.	[illegible]	Order Bowell Bros. Ltd. [illegible]	400	Gs. Sliced Fancy Salmon Belly [illegible]	400	[illegible]	[illegible]	[illegible]		
235-S	do do	[illegible]	do do	600	do do do do do	570	[illegible]	do	[illegible]		
236-S	Bennett, Jones & Southern	[illegible]	Order [illegible]	1 1	[illegible] Fresh Salmon Specialties	[illegible]	[illegible]	[illegible]	[illegible]		
237-S	[illegible] Jones & Company	[illegible]	Order Libby Service [illegible]	7500 2500 2000 500 1	Gs. Sliced [illegible] Fat Salmon " do Regular Sliced [illegible] " do Jewel Agates Gs. Sliced [illegible] Fat Salmon do do do do do	[illegible] [illegible] [illegible] [illegible] [illegible]	[illegible] [illegible] [illegible] [illegible] [illegible]	paid paid paid paid paid	[illegible]	do	do

10

S. S. Steffen Valve and Fitting Co. Portland Oregon Schedule for 1917 Annual

Date	Name	Name	Address	No. Pkgs.	Contents	Cu. Ft.	Value	Rate	Charges	Amt. Prepaid	Rec'd. Payment
				1148	Brought forward	1148	9811.45		1615.23		11426.68 11426.68
10-P	Duplicate Bill of Lading to Capt. Anderson Portland Oregon	Sea Foam	Price + Pierce Limited 17 Clements Lane E. London England	6	Pipe Couplings Flanges	21	570	1000 lbs	11.40		11.40 11.40
11-P	Collected C.O.D. Invoice Portland Oregon	1 Van Load	Order - Notify Ortlieb Packing + Rubber Co. London England	36	Valves Cocks and Couplings	222	3611	1000 lbs	222.66		222.66 222.66
12-P	Collected C.O.D. Invoice Portland Oregon.	1 L 20 2 M 20 3 M 20 4 M 20 5 M 20 6 M 20 7 M 45 8 M 20 9 M 20 10 M 20 11 M 20 12 M 20	Order - Notify Thomas Cook 45 Berners St W.1 London England	216	Valves Cocks and Couplings	1372	10417	1000 lbs	1372.80		1372.80 1372.80
13-P	S.S. Steffen Co. Portland Oregon	994	Order - Notify S.S. Steffen Co. c/o S.S.W. Johnson London EC3 England	355	Brought Forward to Cover		Total Weight for Rate	1000 lbs	1.40		1.40 1.40
	Contents for mate M.S.S.D. Please Acknowledge Receipt Thos Steffen										
				3211		3211	33411		1772.63		11798.48 11798.48
							44.68				

WILLIAMS, DIMOND & CO.

S. S. "ENTERPRISE" Voy. 1 From Seattle, For Liverpool Sailed November 22nd, 19 19 Arrived 19 Sheet No. 114

L. No.	Shipper	Marks	Consignee	No. Pcs.	Articles	Weight	Rate	Freight	Adv. Chgs.	Total	Prepaid	Remarks
B/L 100-S	Northwestern Fisheries Company	BCP CO BRISTOL	Order EDS. L. NYE COMPANY Liverpool Notify BOST. GIRVIN CO. London	1800 440 2240	Ca. Red Cod Salmon Tall Precious Pioneer 2700 fl. 1350000# 1000# 315000#	1665000	1.75 per 100#	$23756.25		$23756.25	$23756.25	Cases double wire & strapped
B/L 101-S	do do do	JT & CO. BRISTOL	DO DO	1575 675 2250	DO DO Jubilee 2362'6" 1102500# do do Precious 1012'6" 472500# 3375 1575000#		1.75	$2756.25		2756.25	2756.25	do do
102-S	do do do	NESB BRISTOL	do do	1800	do do Jubilee 8700 1340000#		1.75	$2806.00		2806.00	2806.00	do do
103-S	do do do	SBACO BRISTOL	do do	450	do do precious 725 31500#		1.75	551.25		551.25	551.25	do do
104-S	do do do	JS & CO. BRISTOL	do do	225 225 450	do do do 387'6" 157500# do do Pioneer 387'6" 157500# 315000#							
105-S	do do do	JDE & CO BRISTOL	do do	225 225 450	do do pioneer 387'6" 157500# do do primer 387'6" 157500# 315000#		1.75	551.25		551.25	551.25	do do
106-S	do do do	S. ILES BRISTOL	do do	450	do do pioneer 725 315000#		do	551.25		551.25	551.25	do do
107-S	do do do	JBM CO. BRISTOL	do do	450	do do Pioneer 725 315000#		do	551.25		551.25	551.25	do do
108-S	do do do	PMS BRISTOL	do do	675	do do do 1112'6" 472500#		do	826.88		826.88	826.88	do do
109-S	do do do	MP & CO.S BRISTOL	do do	112	do do do 112' 7840#		do	137.20		137.20	137.20	do do
110-S	do do do	EP & CO.S, BRISTOL	do do	113	do do do 159'6" 7910#		do	138.43		138.43	138.43	do do
111-S	do do do	EMS BRISTOL	do do	112	do do do 2c' 7840		do	137.20		137.20	137.20	do do
112-S	do do do	CCMS BRISTOL	do do	113	do do do 159-6 7910		do	138.43		138.43	138.43	do do
113-S	do do do	JIACO BRISTOL	do do	450 450 900	do do do 715 315000# do do do all assorted 1550 315000#		do	1102.50		1102.50	1102.50	do do
114-S	do do do	SASCO'S BRISTOL	do do	1125	do do primer 1587'6" 78750		do	1378.13		1378.13	1378.13	do do
115-S	Libby Mc Neill & Libby	1/9250 Liverpool	Order Notify Libby McNeill & Libby, Ltd. London	4250 5000 9250	Halves Chinook Cod Salmon, Libby 4250' 1700.00# do Red " do do 5000 300.000# 9250 300.000#		do	6475.00		6475.00	6475.00	do Iron strapped
116-S	do d do	1/8000 Liverpool 18 Liverpool	Order Libby McNeill & Libby Liverpool, Ntf. Geo.B.Green & Company, Liverpool,	8800	Canned Red Salmon, Flats Libby 7500 350.00#		do	6125.00		6125.00	6125.00	do do
117-S	do do do	D/750 Liverpool	Order Bodwell & Co. Ltd. Notify Powell Bros. Ads. Liverpool.	8000	do do do do do 7500 350.00#		do	6125.00		6125.00	6125.00	do do
118-S	F. H. Knowlton	7TL GLASGOW	Order F.H. Knowlton Liverpool Notify Cryfe Tannery, Ltd. near Glasgow	6 Bale. 1 keg	Green Hides do do		76 3480#	per cwt. 1.25	95.00	95.00	95.00	
119-S	Bodwell & Company, Ltd.	D-769-Liverpool	Order Ntf. Powell Bros. Ads. Liverpool	360	ca. Cnd. Salmon Talon 4lngFl Flats 525 24500#		1.75 per 100#	428.75		428.75	428.75	Cases double wire strapped
120-S	do do do	D-770 Liverpool	do do do do	600	ca do do do 10 Fl Talls 900 42000#		do	735.00		735.00	735.00	do do
121-S	Pacific Exporters Agencies	Morris Reef Co.Ltd. Liverpool, M-133 do M-134	Morris Mfg.Co. Liverpool	1000 2000 3000	ca. cand.pears Matchless Brand 1500 6800.0# do do do Supreme " 3300 184.0# 4800 184000#		do	3255.00		3255.00	3255.00	do do
122-S	North Pacific Sea Products Co.	G-Liverpool	Order Ntfy. David Geddes &Sons Glasgow Scotland	100	ca. Canned Whale Meat 106'8" 7000#		do	122.50		122.50	122.50	do do
				38								
				4800	Meas. 7.1212 40 wt.2.1048 8000							

WILLIAMS, BRADSHAW & CO.

S.S. [illegible] Voy. [illegible] From [illegible] For [illegible] Sailed [illegible] Wind [illegible] Arrived [illegible] Ship's Name [illegible]

No.	Name	Flag	Company	Tons	Port	Cargo	Date	Remarks
1	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
2	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
3	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
4	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
5	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
6	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
7	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
8	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
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13	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
14	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
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16	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
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18	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
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20	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
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25	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
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27	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
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30	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
31	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
32	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
33	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
34	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
35	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
36	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
37	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

WILLIAMS, DIMOND & CO.

S.S. [illegible] Voy. 50 From SAN FRANCISCO For LIVERPOOL Sailed [illegible] 19[illegible] Arrived [illegible] 19[illegible] Sheet No. 2

			BROUGHT FORWARD									
38	GUGGENHIME & CO.	F G A 1564	ORDER GUGGENHIME & CO. LIVERPL. NOTIFY CHAS FOX & SON MANCHESTR	305	BXL. BAGGING		5940	2.00	114.80		114.80	114.80
39	GUGGENHIME & CO.	B LTD 1562	ORDER GUGGENHIME & CO. LIVERPL. NOTIFY CHAS FOX & SON MANCHESTR	1090	BXL. BAGGING		[illegible]	2.00	618.40		618.40	618.40
40	CALIF PACKING CORPN.	G B S P T	NOTIFY MC AULAY BROS GLASGOW	125	CS TOMATOES		8 7750	1.75	135.66		135.66	135.66
41	CALIF CANNERIES CO.	760	ORDER NOTIFY GHAS GILCHRIST & CO	200	CS PEARS		12600	1.75	220.50		220.50	220.50
42	CALIF CANNERIES CO.	759	ORDER NOTIFY R S GREEN & CO.	535	CS PEARS		33705	1.75	589.84		589.84	589.84
43	U.S. WAR TRADING CORPN.	VARIOUS	NO J BULWELL	53	CS CANNED FRUIT		527	[illegible]	10.00		10.00	10.00
44	PACIFIC EXPORTEAM ARTS.	KORALS BEEF CO. LTD	KORALS BEEF CO. LIT LIVERPOOL	850	CS CANNED VEGETABLES		17000	[illegible]	371.25		371.25	371.25
45	CALIF CANNERIES	818	ORDER NOTIFY GHAS GILCHRISTEN	395	CS CANNED PEARS		24675	1.75	431.81		431.81	431.81
46	WILSON & CO.	W & CO. 165	ORDER NOTIFY WILSON & CO. LIVERPOOL	152	CS CANNED PEARS		9408	1.75	164.52		164.52	164.52
47	GAIFSETH, BARNEY	S W	ORDER NOTIFY ARENS HOTSON & CO. NEWCASTLE ON TYNE	400	CS CANNED APRICOTS		48000	1.75	705.25		705.25	705.25
48	OKURA JAPAN & SON AMERICAN TRADE CO.	AC 4 [illegible] T G	ORDER NOTIFY OKURA JAPAN & SON AMERICAN TRADE CO. LIVERPOOL	137	CS PINEAPPLE		9794	1.75	170.89		170.89	170.89
49	ROSENBERG BROS & CO.	VARIOUS	ORDER GEOFFY T D WILSON & CO. LIVERPOOL	5								
50	WILSON & CO.	W & CO. 169	ORDER NOTIFY WILSON & CO. LIVERPOOL	[illegible]	CS DRIED FRUIT CS CANNED FRUIT		[illegible]	[illegible]	[illegible]		[illegible]	[illegible]
51	AMERICAN TRANSPORTATION CO.	VARIOUS	INTERSTATE TRANSPORTATION CO.	324	CNS DRY LEGUMES		23400	2.00	405.20		405.20	405.20
52	CALIF FRUIT & PROD CO.	68	ORDER NOTIFY SHIPPERS REPORTER CO. LTD LIVERPOOL	[illegible]	CS. CNS SALMON		201500	1.75	3504.25		3504.25	3504.25
53	CALIF FRUIT & PROD CO.	68	ORDER NOTIFY CHAS GILCHRIST SONS LTD LIVERPOOL	[illegible]	CS. CNS SALMON		201500	1.75	3504.25		3504.25	3504.25
54	WILSON & CO.	W & CO. 169	ORDER NOTIFY WILSON & CO. LIVERPOOL	[illegible]	CS. CNS FRUITS		[illegible]	[illegible]	[illegible]		[illegible]	[illegible]
55	[illegible]	[illegible]	[illegible]	[illegible]	CS CS CS PEARS		[illegible]	[illegible]	[illegible]		[illegible]	[illegible]
56	PACIFIC EXPORTERS ASSOCIES	G I S I	BORALS BEEF CO. LTD LIVERPOOL	200	CS CS CS APRICOTS		13200	1.75	371.25		371.25	371.25
57	WILSON & CO.	W & CO. 168	ORDER NOTIFY WILSON & CO. LIVERPOOL	250	CS CNS FRUITS		45500	1.75	885.00		885.00	885.00
58	WILSON & CO.	W & CO. 8809	ORDER NOTIFY WILSON & CO. LIVER POOL	2000	CS CS PEARS		64000	1.75	1885.00		1885.00	1885.00
59	CALIF CANNERIES CO.	736	ORDER NOTY GHA GILCHRIST & CO. LIVERPOOL	1150	CS CS PEARS		66654	1.75	1250.25		1250.25	1250.25
60	GETZ BROS & CO. INC.	FOX	S ORDER GETZ BROS & CO. NOTIFY CHAS FOX & SON. MANCHESTER	200	CS CNS PEARS		24000	1.75	540.50		540.50	540.50
61	CALIF CANNERIES CO.	785	ORDER NOTIFY A S GREEN & CO. LIVERPOOL	500	CS CANS PEACHES		25000	1.75	925.50		925.50	925.50
62	GETZ BROS & CO. INC.	FOX	ORDER GETZ BROS NOTIFY CHAS ROS & SON MANCHESTER	1650	CS CNS PEARS		71715	1.75	1255.40		1255.40	1255.40
63	WILSON & CO.	W & CO. 164	ORDER NOTIFY WILSON & CO. LIVERPOOL	275	CS CNS PEACHES		17540	1.75	512.20		512.20	512.20
64	WILSON & CO.	W CO. 164	ORDER NOTIFY WILSON & CO. LIVERPOOL	250	CS CNS PEARS		15500	1.75	371.25		371.25	371.25
65	WILSON & CO.	W & CO. 166	ORDER NOTIFY WILSON & CO. LIVERPOOL	250	CS CS PEARS		15500	1.75	371.25		371.25	371.25
66	WILSON & CO.	W & CO. 165	ORDER NOTIFY WILSON & CO	300	CS CS PEARS		18600	1.75	325.50		325.50	325.50
67	GUGGENHIME & CO.	W & G 1580	ORDER GUGGENHIME & CO. NOTIFY CHAS FOX & SON MANCHESTER	75	BXL. BAGGING		2100	2.00	42.00		42.00	42.00
68	GUGGENHIME & CO.	J G 1581	GUGGENHIME & CO ORDER NOTIFY CHAS FOX & SON MANCHESTER	75	BXL. BAGGING		2100	2.00	42.00		42.00	42.00
69	GUGGENHIME & CO.	G Y C 1573	ORDER GUGGENHIME NOTIFY CHAS FOXA SON MANCHESTER	750	BXL. BAGGING		31500	2.00	630.00		630.00	630.00
70	GUGGENHIME & CO.	W & G 1571	ORDER GUGGENHIME & CO NOTIFY CHAS FOX & SON MANCHESTER	675	BX BAGGING		37800	2.00	735.00		735.00	735.00
	GUGGENHIME & CO.	J C & G 1573	ORDER GUGGENHIME & CO NOTIFY J GRADWICK ROSE MANCHESTER	900	BX BAGGING		50400	2.00	1008.00		1008.00	1008.00
							[illegible]		[illegible]		[illegible]	[illegible]

						CUBIC FEET					
	FORWARD					1,872,860					
	SUBRAHNIE & CO.	F C & S 1576 LIVERPOOL	ORDER NTFY. BRAS. M. FOX & SON	150	25 LB.BAS CALIF. CHOICE SEEDL RAISINS	4200	2.80		$84.00	$84.00
	DO	T C & S 1574 LIVERPOOL	DO	150	DO	4200	2.80		84.00	84.00
	DO	J W P 1575 LIVERPOOL	DO	500	DO	8400	2.80		168.00	168.00
	DO	C & W 1572 LIVERPOOL	DO	588	DO	21728	2.80		484.56	484.56
	DO	D & W 1568 LIVERPOOL	DO	588	DO	21728	2.80		484.56	484.56
	DO	A B C & S 1457 LIVERPOOL	DO	80	25 LB.BAS DAL. DRIED PRUNES 50/60					
				80	DO 60/70					
				80	DO 70/80					
				80	DO 80/90					
				80	DO 90/100	11200	2.80		224.00	224.00
	LEON ISRAEL & BROS.	L I & BROS. LTD ETC. NO.1	ORDER NTFY. MESSRS. ISRAEL LONDON	100	DS PARADISE VALLEY BARTLETT PEARS 24/28 [STRAPPED]	6200	1.75		108.50	108.50
	DO	DO NO.2	DO	50	DO	3100	1.75		54.25	54.25
	DO	DO NO.3	DO	50	DO	3100	1.75		54.25	54.25
	DO	L I & BROS. LTD ETC	DO	500	DS BARTLETT PEARS	31000	1.75		542.50	542.50
	PRATT LOW PRESERVING CO.	415 C LIVERPOOL	ORDER NTFY. HENRY R. PEABODY & CO.	60	CS CANNED FRUIT	3720	1.75		65.10	65.10
	DO	416 C LIVERPOOL	DO	40	DO	2480	1.75		43.40	43.40
	DO	419 C LIVERPOOL	DO	20	CS CANNED FRUIT					
		419 M LIVERPOOL		28	DO	2920	1.75		51.10	51.10
	DO	428 C LIVERPOOL	DO	20	DO	1240	1.75		21.70	21.70
	DO	426 C LIVERPOOL	DO	20	DO	1240	1.75		21.70	21.70
	DO	430 C LIVERPOOL	DO	40	DO	2480	1.75		43.40	43.40
	DO	420 C LIVERPOOL	DO	50	DO	1860	1.75		32.55	32.55
	DO	515 C LIVERPOOL	DO	175	DO					
		585 M LIVERPOOL		725	DO	54950	1.75		961.12	961.12
	HUNT BROS. PACKING CO.	[V] LIVERPOOL	ORDER NTFY. JOS. TRAVERS & SONS.	95	CS 2½ CANNED FRUITS 85 GL.FT.					
		[Q] LIVERPOOL		225	DO 598 DO					
		[TW] LIVERPOOL		160	DO 340 DO					
		X LIVERPOOL		75	DO 112 DO	31950	1.75		558.78	558.78
	PRATT LOW PRESERVING CO.	432 M LIVERPOOL	ORDER NTFY. HENRY R. PEABODY & CO.	7	CS CANNED FRUIT					
		632 M LIVERPOOL		5	DO	720	1.75		12.60	12.60
	DO	425 M LIVERPOOL	DO	30	DO					
		625 M LIVERPOOL		20	DO	5800	1.75		52.50	52.50
	DO	C 401 M LIVERPOOL	DO	30	DO					
		C 601 M LIVERPOOL		259	DO					
		C 401 B LIVERPOOL		60	DO	19860	1.75		357.05	357.05
						2,412,916				

No.											
	FOR BRO							2,112,916		$8978.36	$8978.36
93	PRATT LOW PRESERVING CO.	619 M LIVERPOOL	ORDER NTFY.HENRY W.PEABODY & CO.	20	CS.CANNED FRUIT	1200	1.75	21.00	21.00
94	DO	420 M LIVERPOOL	DO	136	DO				
		620 M LIVERPOOL	DO	90	DO	15500	1.75	236.25	236.25
95	DO	426 M LIVERPOOL	DO	90	DO				
		626 M LIVERPOOL	DO	60	DO	9000	1.75	157.50	157.50
96	DO	427 M LIVERPOOL	DO	20	DO				
		627 M LIVERPOOL	DO	5	DO	1500	1.75	26.25	26.25
97	DO	428 M LIVERPOOL	DO	88	DO				
		628 M LIVERPOOL	DO	10	DO	1800	1.75	31.50	31.50
98	DO	430 M LIVERPOOL	DO	60	DO				
		630 M LIVERPOOL	DO	40	DO				
		430 M LIVERPOOL	DO	60	DO				
		630 M LIVERPOOL	DO	40	DO	12000	1.75	210.00	210.00
99	DO	431 M LIVERPOOL	DO	15	DO				
		631 M LIVERPOOL	DO	10	DO	1500	1.75	26.25	26.25
100	DO	415 M LIVERPOOL	DO	280	DO				
		615 M LIVERPOOL	DO	120	DO	24000	1.75	420.00	420.00
101	DO	616 M LIVERPOOL	DO	80	DO				
		416 M LIVERPOOL	DO	175	DO	15500	1.75	367.75	367.75
102	DO	417 M LIVERPOOL	DO	90	DO				
		617 M LIVERPOOL	DO	60	DO	9000	1.75	157.50	157.50
103	DO	418 M LIVERPOOL	DO	15	DO				
		618 M LIVERPOOL		15	DO	1500	1.75	26.25	26.25
104	GETZ BROS.& CO.INC.	FOX LIVERPOOL	ORDER NTFY.CHAS.H.FOX & SON	150	CS CND.PEARS				
				1	CS CND.ASPARAGUS				
				1	CS CND.ASPARAGUS	8826	1.75	154.46	154.46
105	DO	DO	DO	180	CS CND.FRUIT	10460	1.75	183.05	183.05
106	CANCELLED								
107	GETZ BROS.& CO.INC.	DO	DO	508	CS CND PEARS	19712	1.75	344.96	344.96
108	ROSENBERG BROS.& CO.	D D 114 LIVERPOOL	ORDER	500	BAGS RICE				
		D D 115		500	DO	102000	1.75	1785.00	1785.00
109	WILSON & CO.	R&CO 904 LIVERPOOL	ORDER [illegible]	480	CS CND PEARS	29760	1.75	520.80	520.80
110	DO	R&CO 905 LIVERPOOL	ORDER	450	CS CND APRICOTS	27900	1.75	488.25	488.25
111	DO	R&CO 903 LIVERPOOL	ORDER	500	CS DO	31000	1.75	542.50	542.50
112	DO	R&CO 904 LIVERPOOL	ORDER	299	CS DO	18538	1.75	324.41	324.41
113	DO	R&CO 901 LIVERPOOL	ORDER	77	CS DO	4774	1.75	83.54	83.54
114	CALIFORNIA CANNERIES CO.	CCC LIVERPOOL	ORDER NTFY.R.B.GREEN & CO.	690	CS CANNED PEARS	43152	1.75	755.16	755.16
115	WILSON & CO.	R&CO LIVERPOOL 902	ORDER	200	CS CND APRICOTS	12400	1.75	217.00	217.00
116	DO	R&CO 907 LIVERPOOL	ORDER	174	CS DO	10788	1.75	188.79	188.79
117	DO	R&CO 908 LIVERPOOL	ORDER	165	DO	10230	1.75	179.02	179.02
118	GETZ BROS.& CO.INC.	FOX LIVERPOOL	ORDER NTFY.CHAS.H.FOX & SON	60	CS CND PEARS	3720	1.75	65.10	65.10
119	DO	DO	DO	1500	DO	93000	1.75	1627.50	1627.50
120	CALIFORNIA CANNERIES CO.	772 LIVERPOOL	ORDER NTFY.R.B.BROWN & CO.	200	CS CND PEARS	12400	1.75	217.00	217.00
						2,641,876		46233.87	46233.87

S.S. EFFINGHAM Voy. 50 From SAN FRANCISCO For LIVERPOOL Sailed 19 Arrived 19 Sheet No. 1

No.	Shippers	Marks	Consigned	No. Pkgs	Articles	Weight	Rate	Freight	Ins. Chgs.	Total	Freight
	FORWARD					2,541,276		4875.87		4875.87	4875.87
121	WILSON & CO.	WACO 967 LIVERPOOL	ORDER	450	CS CND PEACHES						
122	DO	WACO 1005 DO	ORDER	750	CS CND PEARS	74400	1.75	1302.00		1302.00	1302.00
123	DO	WACO 966 DO	ORDER	200	CS CND PEARS	12400	1.75	217.00		217.00	217.00
124	DO	WACO 963 DO	ORDER	750	CS CND PEARS	46500	1.75	813.75		813.75	813.75
125	SMITH FRANK PACKING CO.	M.A.S.BLASDOR VIA LIVERPOOL	ORDR.NTFY HASEROT CANNERIES CO. C/O JAMES MORTON & CO.	250 98 950	CS CND CHERRIES CS CND PLUMS CS CND PEARS	21576 58900	1.75 1.75	377.58 1030.75		377.58 1030.75	377.58 1030.75
126	WILSON & CO.	WACO 962 LIVERPOOL	ORDER	700	CS CND PEARS	43400	1.75	759.50		759.50	759.50
127	DO	WACO 965 LIVERPOOL	ORDER	450	DO	27900	1.75	488.25		488.25	488.25
128	DO	WACO 967 LIVERPOOL	ORDER	25	CS CND CHERRIES	1550	1.75	27.12		27.12	27.12
129	DO	WACO 963 LIVERPOOL	ORDER	1750	CS CND PEARS	108500	1.75	1898.75		1898.75	1898.75
130	DO	WACO 966 LIVERPOOL	ORDER	835	CS CND APRICOTS	51770	1.75	905.97		905.97	905.97
131	DO	WACO 961 LIVERPOOL	ORDER	403	CS CANNED APRICOTS	24986	1.75	437.25		437.25	437.25
132	DO	WACO 963 LIVERPOOL	ORDER	750	CS CND PEACHES	46500	1.75	813.75		813.75	813.75
133	DO	WACO 964 LIVERPOOL	ORDER	28	CS DO	1960	1.75	34.30		34.30	34.30
134	DO	WACO 965 LIVERPOOL	ORDER	250	CS DO	15500	1.75	271.25		271.25	271.25
135	DO	WACO 1005 DO	ORDER	190	CS CND APRICOTS	11780	1.75	206.15		206.15	206.15
136	DO	WACO 964 LIVERPOOL	ORDER	500	CS CND PEARS	31000	1.75	542.50		542.50	542.50
137	CALIFORNIA CANNERIES CO.	784 LIVERPOOL	ORDR.NTFY.HONEYMAN & WILSON	20	CS CANNED PEACHES	1240	1.75	21.70		21.70	21.70
138	DO	786 LIVERPOOL	ORDR.NTFY.THOMAS MARSHALL	20	DO	1240	1.75	21.70		21.70	21.70
139	DO	790 LIVERPOOL 791 LIVERPOOL	ORDR.NTFY.SIMPSON.ROBERTSACO.	125 125	CS CANNED PEACHES DO	15500	1.75	271.25		271.25	271.25
140	DO	777 LIVERPOOL 778 LIVERPOOL	ORDR.NTFY.S.&R.BERISFORD	125 125	CS DO CS DO	15500	1.75	271.25		271.25	271.25
141	DO	787 LIVERPOOL	ORDR.NTFY.GEO.HELLIS & SONS	25	CS CANNED PEACHES	1550	1.75	27.13		27.13	27.13
142	DO	781 LIVERPOOL	ORDR.NTFY.EILLS & CO.	40	CS DO	2480	1.75	43.40		43.40	43.40
143	DO	780 LIVERPOOL	ORDR.NTFY.CARROTHERS & CO.	125	CS DO	7750	1.75	135.63		135.63	135.63
144	DO	782 LIVERPOOL	ORDR.NTFY.JAS.GILBERTSON & CO.	125	CS DO	7750	1.75	135.63		135.63	135.63
145	DO	789 LIVERPOOL	ORDR/NTFY.G.& J.NICKSON & CO.	930	CS DO	57660	1.75	1009.05		1009.05	1009.05
146	DO	788 LIVERPOOL	ORDR.NTFY.MCNAIS & JONES	250	CS DO	15500	1.75	271.25		271.25	271.25
147	DO	785 LIVERPOOL	ORDR.NTFY.DAVID JONES & CO.	250	CS DO	15500	1.75	271.25		271.25	271.25
148	GETZ BROS.& CO.INC.	FOX LIVERPOOL	ORDR.NTFY.CHAS.H.FOX & SONS	247	CS CANNED PEARS	15802	1.75	276.64		276.64	276.64
149	WILSON & CO.	W & CO 963	ORDER WILSON & CO NOTIFY WILSON & CO.	1500	CS CND PEACHES	93000	1.75	1627.50		1627.50	1627.50

WILLIAMS, DIMOND & CO.

S.S. EFFINGHAM Voy. 1 From SAN FRANCISCO For HAMBURG Sailed 19 Arrived 19 Sheet No. 1

					Cubic Feet	Weight	Rate	Amount	Advance	Freight	Charges
1	J. OSWALD	ADDRESSED	HERMAN SCHALLMANN	1 CS CEREAL 1 CS OLD CLOTHING 1 CS CANNED GOODS	18		1.625	29.25			
2	GEORGE F. W. LEHMANN	ADDRESSED	PAUL MICHMANN	5 CS OLD CLOTHING	18	400	2.50	45.00		45.00	45.00
3	RUDOLPH MOHR	ADDRESSED	REGINA MOHR	1 BS CLOTHING 1 CS FOOD PRODUCTS	18		1.625	29.25		29.25	29.25
4	JOHN GROSS	ADDRESSED	GERTRUDE GROSS	1 BOX OLD CLOTHING		40	25%	10.00		10.00	10.00
5	BERNHARD BUNG	ADDRESS U	RICHARD BRUDERMANN	3 BALES OLD CLOTHING 5 CS ASST. GROCERIES	9 [illegible]	310 48	8.00 1.625 2.50	24.80 14.63 1.20		40.53	40.53
6	F. R. [illegible]	ADDRESSED	MRS. CLARITA NAUPERT MUHLENDAHL	1 BBL. WEARING APPAREL		190	8.00	52.00		52.00	52.00
7	A. F. ARGENY CO.	ADDRESSED	JOHANN DAHNKE	1 CS FOOD STUFFS	5	183	MIN	10.00		10.00	10.00
8	A. F. ARGENY CO.	ADDRESSED	MARIE KUHLBEIER	1 CS FOOD STUFFS	6	180	MIN	10.00		10.00	10.00
9	A. HAUSTEADT	ADDRESSED	ADOLF BLUM	1 BOX CLOTHING		110	MIN	10.00		10.00	10.00
10	MRS. ALBERTO BOHLMANN	ADDRESSED	MRS SOPHIE RANTZ	1 CS GROCERIES 1 CS THREAD & WEARING APPAREL	14		1.625	22.75		22.75	22.75
11	HENRY BOHLEDER	ADDRESSED	F GRIMME	1 CRT GROCERIES		282	MIN	10.00		10.00	10.00
12	HENRY SCHNEIDER	ADDRESSED	MARX BECKER	1 CRT FOOD PRODUCTS		225	MIN	10.00		10.00	10.00
13	E. POLLATZ	ADDRESSED	J. NEUMANN	1 CS GROCERIES 1 CS USED CLOTHING RICE SOAP 1 CS USED CLOTHING CHOCOLATE SOAP	15		1.625	21.13		21.13	21.13
14	[illegible]	ADDRESSED	MRS. AGNES SCHULZ	1 CS LARD & BB CORNED BEEF 1 CS CO GOODS COFFEE & CHOCOLATE 1 CS RICE 1 CS BARLEY FLOUR 1 CS CO MILK, BEANS ETC 1 CS SOAP	18 BAL. SEE 1ST ITEM	225 168 138 234 158	2.25 2.40 2.50	3.78 5.51 14.19			
15	[illegible]	ADDRESSED	GUSTAV LUBOHN	1 CS NEW CLOTHES 1 BOX CLOTHING TOBACCO & GROCERIES	2 14		1.625 1.625	19.50 22.75		40.78 22.75	40.78 22.75
16	[illegible]	ADDRESSED	[illegible] H. STERNBERG	1 CS FOOD & CLOTHING 1 CS CANNED ROAST BEEF 1 CS CANNED CORNED BEEF 1 CS CRISCO 1 BS DRIED PRUNES 1 BAG SUGAR		56 136 92 151	8.00 3.25 3.40 2.50	4.48 2.84 3.13 3.28		13.73	13.73
17	[illegible]	ADDRESSED	GUSTAV ROSENTHAL	1 CS [20 HAND] WEARING APPAREL	8	108	1.625	13.00		13.00	13.00
18	SOPHIE LANGER	MORITZ LIEBOLD HAMBURG 5	ANDREE & WILKERLING	1 CS GROCERIES		120		10.00		10.00	10.00
19	[illegible] PORTLAND OREGON	ELKAN HAMBURG	ELKAN HAMBURG	PKG. GENERAL MERCHANDISE 190 CS. 9 CRATES. 4 BARRELS	1148		1.625	1865.50		1865.50	1865.50
20	[illegible]	M.K.S. HAMBURG	BARTNING GEBR	1 CS SOAP 1 CS LARD 1 CS SUGAR 1 CS RICE 5 CS MILK		260 70 60 60	2.50 3.40 2.50 2.25	5.98 2.55 1.50 1.35		11.21	11.21
21	[illegible]	VARIOUS	ORDER NTFY C.N.HALLBAECH & SOEHNE	56 PKGS PROVISIONS	ABBR	1827 531 499 168 519 96	2.50 2.25 2.50 3.50 3.40 8.00	42.02 11.95 12.48 5.88 10.85 7.68		90.86	90.86
22	[illegible]	ADDRESSED	ALFRED HOLLE	1 CS CANNED FOODSTUFFS 1 CS WORN CLOTHING		570 200	2.50 8.00	13.11 16.00		29.11	29.11
23	[illegible]	M.S. C/O U.C.P.CO. HAMBURG	J.C.PFLUEGER & CO.	5 BAGS COFFEE		510	2.50	11.73		11.73	11.73
24	[illegible]	ADDRESSED	MRS. IDA BECKER	1 BOX GENERAL MDSE.	10		1.625	16.25		16.25	16.25
					[illegible]	8154		2378.26		2378.26	2378.26

WILLIAMS, DIMOND & CO.

S.S. EFFINGHAM Voy. 1 From SAN FRANCISCO For HAMBURG Sailed 19 Arrived 19 Sheet No. 2

No.	Name	Marks	Consignee	No. Pkgs.	Description	Cubic Feet	Weight	Rate	Freight	Advances	Total	Payments
	BROUGHT FORWARD					1299	8654				2378.38	2378.38
25	EDW. H. BROWN	ADDRESSED	CARL SCHREIBER SONNENBERG	2 1 1 1 1 1 1	BDLS.[4 SX] FLOUR CS. CANNED BEEF CS. DRIED APRICOTS CS. JAM CS. CORN STARCH CS. RAISINS CS. CANNED PEACHES	2	405 180 61	2.40 2.50 2.50 1.625	9.72 4.14 2.13 3.25		19.24	19.24
26	J.LEFKOWITZ	ADDRESSED	ROHLIG & CO.FOR SIMON SONNEIDER	1	CS HOSE.	15		1.625	24.38		24.38	24.38
27	MARTIN F.HUNINS	ADDRESSED	MR.GUSTAV LEBAHN	1 1	PKG.OLD CLOTHING DO AND GROCERIES		Min.		10.00		10.00	10.00
28	MRS.M.HEY	ADDRESSED	HEINRICH MARTIN	1	CS HOSE.	8		1.625	13.00		13.00	13.00
29	BECH.VAN SICLEN & CO.INC.	U.E.C. 16 HAMBURG	ORDR.NTFY UNITED EXPORT CO.LTD.	500	BAGS RICE SCREENINGS [DOUBLE BAGGING]		50000	2.25	1125.00		1125.00	1125.00
30	RELIEF COMMITTEE FOR WOMEN & CHILDREN OF GERMANY & AUSTRIA	D.R.K. BERLIN NO 700	DEUTSCHE ROTE KREUZ GESELLSCHAFT	700	SACKS BEANS		60200	2.50	1384.60		1384.60	1384.60
31	DO	D.R.K. BERLIN NO.489 TO NO.492 INCL.	DO	4	CS GENERAL HOSE	51		1.625	82.88		82.88	82.88
32	DO	D.R.K. BERLIN NO.500	DO	1500	CS CONDENSED MILK [ALPINE]		97500	2.25	2193.75		2193.75	2193.75
33	DO	D.R.K. BERLIN NO.400	DO	400	SX RICE SCREENINGS		40000	2.25	900.00		900.00	900.00
34	DO	D.R.K. BERLIN NO.87 TO NO.90 INCL.	DO	4	CS COTTON FLANNEL	168		1.625	273.00		273.00	273.00
35	WAGNER LEATHER CO.	ADDRESSED	OTTO BRAUN,BOSENBACH,RHEINPFALZ. GERMANY	1	CS GROCERIES	10		1.625	16.25		16.25	16.25
36	MRS.H.H.BLAU	ADDRESSED	MISS AMALIA ORSCHIEDT	1	CS GROCERIES & CLOTHES	10		1.625	16.25		16.25	16.25
37	WAGNER LEATHER CO.	ADDRESSED	KARL OR BERNARD MEHRER	1	CS GROCERIES & CLOTHES	10		1.625	16.25		16.25	16.25
38	PETER STELLING	ADDRESSED	MRS.LANE JENSEN	1	BDL. USED CLOTHING		Min.		10.00		10.00	10.00
39	RELIEF COMMITTEE FOR WOMEN & CHILDREN OF GERMANY & AUSTRIA	D.R.K. BERLIN 1/65 80/6 51 400/87	DEUTSCHE ROTE KREUZ GESELLSCHAFT	5 4 13 2 76 1 388 13 5 1 21	CS CANNED BEANS CS CANNED MILK SX BEANS CS SOAP CS CANNED MILK BX CANNED MILK CS MERCHANDISE BX DO BDLS DO CAT DO BX DRIED PRUNES	4557	7650 1565	2.30 2.50 1.625	175.95 39.38 7047.63		7263.16	7263.16
40	N.T.BECK	ADDRESSED	H.BREYUCK	1 2	CS.BACON CS.ROAST BEEF		Min.		10.00		10.00	10.00
41	J.O.ELLIS FORWARDING CO.	ADDRESSED	GUSTAV HALLENSHEID	1	CS HOSE		Min.		10.00		10.00	10.00
42	DO	ADDRESSED	MRS.BEATRUDE EBERS	1	BX HOSE		Min.		10.00		10.00	10.00
43	RELIEF COMMITTEE FOR WOMEN & CHILDREN OF GERMANY & AUSTRIA	D.R.K. BERLIN NO.500	DEUTSCHE ROTE KREUZ GESELLSCHAFT	500	CS CONDENSED MILK		19200	2.10	403.20		403.20	403.20
44	J.O.ELLIS FORWARDING CO.	ADDRESSED	MRS.HELEN SHEPKY	1	CS MERCHANDISE		Min.		10.00		10.00	10.00
45	DO	ADDRESSED	HERMAN OBRIKAT	1	CS DO		Min.		10.00		10.00	10.00
46	H.ZIMMERMAN	O.Z. HAMBURG	OTTO ZIMMERMAN	3 2 8 2 2 1 4	BDLS.[2 BX] DRIED FRUIT BXS DO CS. CANNED MILK CS. SOAP CS. LARD CS. RICE CS. CANNED FRUIT		248 895 100 60	2.50 2.50 3.40 1.55	6.20 20.39 3.40 1.55		31.54	31.54
						5906	186548				16210.78	16210.78

47	U.G.E.L.I.S FORWARDING CO.	ADDRESSED	HERAN E.KAPPEL	1	CS SECOND HAND CLOTHING	5	MDSE.			10.00		10.00	10.00
48	DO	ADDRESSED	G.A.HALLENSHEID	1	CS MERCHANDISE	4	MDSE.			10.00		10.00	10.00
49	A.H.KORTEN	U.G.E. 100	INGEBURG JENSEN	1	BX PERSONAL BELONGINGS	9			1.625	14.63		14.63	14.63
50	ELIZABETH REIN	ADDRESSED	WILLIAM REIN	1	BASKET MERCHANDISE	4	MDSE.			10.00		10.00	10.00
51	DO	ADDRESSED	ARTHUR MEYER	1	BX MERCHANDISE	3	MDSE.			10.00		10.00	10.00
52	SCHRODER PRESERVING CO.	ADDRESSED	PAUL REICHELT,ALTEN	4 2 1	BX JAR & JELLY BX MERCHANDISE BASKET PERSONAL EFFECTS	3			2.50 6.50 1.625	6.31 13.00 4.88		23.09	23.09
53	EMBLANDEN DRAYAGE CO.	ADDRESSED	JACOB MADHOL ETTLINGEN	1	CS.OLD & NEW CLOTHING & GROCERIES	21			1.625	34.13		34.13	34.13
54	BECH. VAN SICLEN & CO. INC.	U.E.C. 86 HAMBURG	CAUR,NTFY,UNITED EXPORT CO.LTD.	2000	POCKETS RICE			204000	2.25	4590.00		4590.00	4590.00
55	DO	U.E.C.C. 15 HAMBURG	DO	1000	DO			102000	2.25	2295.00		2295.00	2295.00
56	WILLIS & CO. INC.	W.M. HAMBURG	HUGO HARTIG	1 5	CS HOSE CS GROCERIES	20			1.625	32.50		32.50	32.50
57	U.G.E.L.I.S FORWARDING CO.	ADDRESSED	MRS.ELSIE GANZEL	1	BX MERCHANDISE	6	MDSE.			10.00		10.00	10.00
58	HARRY ABRAHAM	W.G. FRANKFURT A/M	MR.GRUNEBALM	1	DO	6	MDSE.			10.00		10.00	10.00
59	RUDOLPH MOHR	ADDRESSED	HELENE MOHR	1	DO	4	MDSE.			10.00		10.00	10.00
60	KARL KREISCH	U.G. BRESLAU	JOSEPH JONAS	1	CS DO	6	MDSE.			10.00		10.00	10.00
61	JENSEN BROS.	ADDRESSED	MRS.MARIE JENSEN	1 1 1	CS SUGAR CS GROCERIES CS WALNUTS		MDSE.			10.00		10.00	10.00
62	KARL KREISCH	A.K.	ADOLPH KREISCH	1 1 1	CS CANNED BEEF CS NAVY BEANS CS HOSE	6		99 224	2.25 2.50 1.626	1.33 5.11 9.75		16.25	16.25
63	CANCELLED												
64	U.G.E.L.I.S FORWARDING CO.	OTTO LEHMANN	OTTO LEHMANN	1	CS MERCHANDISE		MDSE.			10.00		10.00	10.00
65	RELIEF COMMITTEE, PORTLAND, ORE.	ELKAN HAMBURG 501/525 550/554 801/824 850/854	NATIONALE HILFS KOMITEE	917 340	CS CONDENSED UNSWEETENED MILK PKG GENERAL MDSE	1495		35605	1.626 2.10	2429.38 1251.71		3681.09	3681.09
66	BECH.VAN SICLEN & CO.INC.	U.E.C.100 HAMBURG U.E.C.25 HAMBURG	UNITED EXPORT CO.LTD.	7500 2500	BAGS RICE POCKETS RICE [125 TONS]			1021250	2.25	22978.13		22978.13	22978.13
67	JOSA HENNIG	HERAN FRITZ SCHNEIDER	H.C.LEITHEUSEN	1	CS MERCHANDISE	9			1.626	14.63		14.63	14.63
68	MAX CHRISTENSEN	HERMEN CHRISTENSEN VILLA LINDBERG APENRADE SCHLESWIG HOLSTEIN GERMANY	H.C.LEITHEUSEN	1	DO	18			1.626	29.25		29.25	29.25
69	ANNA F.BLOMBERG	AUGUSTE BLOMBERG	AUGUSTE BLOMBERG	1	DO		MDSE.			10.00		10.00	10.00
70	JARVIS BROTHERS	ADDRESSED	HENRY WARZINSKY	1 2	CS CLOTHING CS GROCERIES	6		95	8.00 1.626	7.60 9.75		17.35	17.35
71	BECH.VAN SICLEN & CO.INC.	U.E.C.100 HAMBURG	CAUR,NTFY,UNITED EXPORT CO.	3000	POCKETS RICE [150 TONS]			306000	2.25	6885.00		6885.00	6885.00
72	H. HUSEMEIER	H.H.HEIMANN	H.H.HEIMANN	1 1	CS CELLO [MUSICAL INSTRUMENT] CS OLD BOOKS	26			1.626	42.25		42.25	42.25
73	HANS CHRISTENSEN	ADDRESSED	CARL JACOB SPRINGEIN	15	PKGS PROVISIONS			65 140 114 192 51	3.50 2.25 2.50 2.10 2.50 1.625	3.28 7.65 2.82 4.03 1.28 3.25		21.11	21.11
						2581						36995.17	36995.17

WILLIAMS, DIMOND & CO.

S. S. EFFINGHAM Voy. From SAN FRANCISCO For HAMBURG Sailed 19 Arrived 19 Sheet No. 4 124

		Marks				CUBIC					
	FORWARD					[illegible]	[illegible]			[illegible]	[illegible]
74	HAAS BROTHERS	ADDRESSED	FRAU ROSA ISRAEL	18	PKGS PROVISIONS	7	19/76 67	1.62½	18.37	56.995.17	56.995.17
							36	3.50	1.26		
							465	2.25	10.46		
							64	2.50	1.60		
							65	2.10	1.37		
							69	2.30	1.59	27.65	27.65
75	HAAS BROTHERS	ADDRESSED	FRAU JACOB RAISS	15	PKGS PROVISIONS		114	2.30	2.62		
							65	3.50	2.28		
							340	2.25	7.65		
							51	2.50	1.28		
							192	2.10	4.03		
						2		1.62½	3.25	21.11	21.11
76	HAAS BROTHERS	ADDRESSED	F.TRIEST & SOHN	15	PKGS PROVISIONS		65	3.50	2.28		
							341	2.25	7.67		
							52	2.25	1.30		
							115	2.30	2.65		
							193	2.10	4.05		
						2		1.62½	3.25	21.20	21.20
77	ROSENBERG BROS. & CO.	RR 745 RR 757 RR 747 HAMBURG	ORDER NTFY.ALFRED HONIGBAUM	145	BAGS RICE						
				198	DO						
				1149	DO		150692	2.25	3390.57	3390.57	3390.57
78	J.F.C.HAGENS	S & H BREMEN	ORDER NTFY.SMIDT & HAGENS	2	CS PINEAPPLE CORES		110	2.30	2.53		
				14	CS LUBRICATING OIL		1400	2.40	33.60		
				80	BBLS DO		36000	2.40	864.00	900.13	900.13
79	J.ARON & COMPANY INC.	ARONCO A A A HAMBURG	ORDER J.ARON & CO.NOTIFY ORDER	212	BAGS RICE (CHOICE)CALIFORNIA		21200	2.25	477.00	477.00	477.00
80	BECH.VAN SICLEN & CO. INC.	U.E.C.19 HAMBURG	ORDR.NTFY.UNITED EXPORT CO.LTD.	2500	POCKETS CAL.JAPAN RICE (125 TONS)						
		U.E.C.23 HAMBURG		7000	DO (350 TONS)		959500	2.25	21588.75	21588.75	21588.75
81	BECH.VAN SICLEN & CO. INC.	U.E.C.22 HAMBURG	ORDR.NTFY.UNITED EXPORT CO.LTD.	20000	POCKETS CAL.JAPAN RICE (1000 TNS)		2020000	2.25	45450.00	45450.00	45450.00
82	SHIPPENS COMMERCIAL COMPANY	SCC HAMBURG 140	ORDR.NTFY.NAGLE & COHRS	500	BAGS FANCY COATED RICE						
		SCC HAMBURG 141		500	BAGS CHOICE COATED RICE		101000	2.25	2272.50	[redacted]	[redacted]
83	BECH.VAN SICLEN & CO. INC.	U.E.C.28 HAMBURG	ORDR.NTFY.UNITED EXPORT CO.LTD.	2000	POCKETS CHOICE CAL.JAPAN RICE		204000	2.25	4590.00	4590.00	4590.00
84	CARL MUNTER	ADDRESSED	DAVID LANGE BERLIN	2	CS CO MILK			MIN.	10.00	10.00	10.00
				1	CS SOAP						
85	BECH. VAN SICLEN & CO.INC.	U.E.C.14 HAMBURG 1 TO 100	ORDER NTFY.UNITED EXPORT CO.	99	CS CANNED SARDINES						
		K.R.C. 3 HAMBURG		1	CS CANNED FRUIT		4470	2.25	100.58	100.58	100.58
86	ROSENBERG BROS.AND CO.	F E 227 HAMBURG	ORDER OF L.BEHRENS SOEHNE HAMBURG	4812	BAGS BEANS		498418	2.30	11235.51	11235.51	11235.51
87	DO	D E 115 HAMBURG	FERD ANDERSEN CO.	4000	DOUBLE BAGS RICE		408000	2.25	9180.00	9180.00	9180.00
88	DO	B & B HAMBURG	ORDER	6	CS DRIED FRUIT RICE & RAISINS MIXED	24		1.62½	39.00	39.00	39.00
						[illegible]	8.577.974		156.: 7.17	[redacted]	

WILLIAMS, DIMOND & CO.

S. S. FRESNIGHAM Voy. 50 From SAN FRANCISCO For BALBOA Sailed 19 Arrived 19 Sheet No. 1 125

No.		Marks	Consignee	No. Pkgs	Articles	Weight	Rate	Freight	Adv. Charges	Total	Primage	
1	W R GRACE & CO.	NO MARK	PANAMA AGENCIES CO.	1	LOT CONTAINING 5936.69 NET BARRELS EACH 42 GALLONS OF 231 CUBIC INCHES DIESEL FUEL OIL IN BULK							FREIGHT TO BE PAID ON OUT TURN AT BALBOA ACCORDING TO PANAMA CANAL OFFICIAL GAUGES.

COPY.

December 1st, 1919.

Messrs. Williams, Dimond & Co.
310 Sansome Street,
San Francisco, Calif.

Gentlemen:

Attention of Mr. Fred Hooper:

CARGO DIESEL OIL PER SS. "EFFINGHAM"

We agree to deliver to the SS. EFFINGHAM at San Francisco approximately 6000 barrels of Diesel Oil to be carried as freight in the vessel's deep tanks to Balboa, C. Z., and there delivered at the Government Oil Crib to Tank No. 10 via Panama Canal Pumps. It is understood that this oil is to be delivered to the vessel at San Francisco at such a time that no delay will be occasioned in loading.

It is understood that freight will be payable at the rate of 65¢ per net barrel on the quantity of Diesel Oil delivered at Balboa as determined by the official gauges of the Panama Canal; also that the ship will pay for any of this oil retained on board at the Shipping Board rate for Fuel Oil at Cristobal on the date of shipment. The vessel will pay for any of this cargo oil consumed as bunkers between San Francisco and Balboa at the established Panama Canal rate for Diesel Oil at Balboa on the date of shipment.

Freight will be payable in San Francisco on receipt of cable advices of the quantity delivered at Balboa.

In the event of a constructive total loss of the vessel and/or cargo mentioned herein, we agree to pay freight on the total net barrels placed on board at San Francisco.

We agree to discharge and take delivery of this oil at Balboa at the rate of 800 barrels per hour, time being calculated from the hour the vessel commences pumping to the hour pumping is completed, failing which we agree to pay demurrage at the rate of $1.00 per net registered ton per day, it being understood, however, that we will not be required to pay demurrage in the event there is no actual delay to the vessel in transitting the Canal.

It is mutually understood and agreed that the ship's pumps are to be at our disposal under the direction of the Chief Engineer of the vessel, who is to be instructed by you to co-operate with us and render all possible assistance in expediting handling.

We further agree to reimburse the ship for any port, pilotage or wharfage charge incurred directly on account of the fact that the vessel is carrying cargo Fuel Oil and which would not be incurred should the vessel transit the Canal without docking at the Government Oil Crib, Balboa, for the purpose of discharging this cargo oil.

This agreement is subject to the usual clauses of the United States Shipping Board's bill of lading.

In the event that a berth is not available or we are not in a position to receive oil on the steamer's readiness to discharge we agree to pay demurrage at the rate specified above from the hour the vessel is in readiness to discharge until pumping com-

mences providing, as above, that actual delay in transmitting the Canal is thus occasioned.

We are sending you this letter in duplicate, and request that you sign and return to us one copy, signifying your acceptance of the terms and conditions as contained herein.

Yours very truly,
W. R. GRACE & CO.,
K. WILLIAMS,
Oil Department.

Accepted:
WILLIAMS, DIMOND & CO.
By F. A. HOOPER.

S.S. [illegible] Voy. to [illegible] From San Francisco For [illegible] Sailed [illegible] 19 Arrived [illegible] 19 Sheet No. 130

C.B.	Name	Rate	Capacity	No. Pcs.	Marks	Value	Rate	Amount	Date	Time	Remarks	CHARGES	Remarks
1.	[illegible]	[illegible]	[illegible]	1 CAT	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

Form No. 940

CANADIAN GOVERNMENT MERCHANT MARINE LIMITED

BRITISH COLUMBIA—CALIFORNIA SERVICE

E. H. DODWELL & CO., LTD., AGENTS, SAN FRANCISCO AND LOS ANGELES, CAL.

BILL OF LADING—ORIGINAL

Shipper's No. .....

Agent's No. .....

RECEIVED, subject to the classifications and tariffs in effect on the date of issue of this Original Bill of Lading

at 192

from .....

the goods described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, to be carried upon and subject to the conditions on the face and back hereof, to the usual place of delivery at said destination.

Nature, Weight, Quantity, Measure, Gauge, Quality, Grade, Condition, Brand, Contents and Value unknown, and the shipowner not accountable for same notwithstanding any written description.

(Mail Address—Not for purposes of delivery.)

Consigned to .....

Destination ..... (Province or State of..... County of.....

Route ..... Vessel.....

MARKS—NUMBERS (As Given by Shipper)	No. of Pkgs.	DESCRIPTION OF ARTICLES (As Given by Shipper)	WEIGHT—CUBIC FEET (Subject to Corrections)	

...Court
17692
Respondent's Exhibit No. H.
January 2, 1925.
F. B. MALING, Clerk
J. Nobarbye Deputy Clerk

No. 4748
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT
FILED
JAN 4 1926
F. D. MONCKTON,
CLERK.

FREIGHT

Advances

Arbitrary beyond

Total Collect

Prepaid

Terms and Conditions Accepted.

Value of Shipment stated by Shipper $ .....

Said packages were received and are to be held and carried and delivered by Carrier and by each several succeeding carrier, if any, subject to all the stipulations and conditions hereon and on the reverse side hereof and under which freight on said packages were adjusted and packages were received for transportation and to all of which shipper has agreed and hereby does agree; and every holder hereof shall be held bound thereby whether same be printed or written.

(SHIPPER) (RECEIVING CLERK FOR CARRIER)

It is agreed with regard to the shipment of packages destined beyond carrier's line that as soon as any one connecting through carrier has delivered packages to another connecting carrier, warehouse, or other facility used in connection with the through transit of package, that freight shall be earned to the point of such delivery and shall be due and payable at the rate arranged by the carrier, warehouseman or such other facility, or, if not arranged, then as prescribed by the printed tariffs, and, if not so determinable, then the amount due shall be such portion of the through rate as the distance carried bears to the whole distance to be carried, and such freight shall be earned whether vessel, warehouse facility and/or goods are or are not lost, damaged or destroyed, and, in addition to the personal liability of the consignor and owner of the goods, the carrier, warehouseman, and such other facility, shall have a lien on every package or part of package for such freight and charges. This clause shall be for the benefit of each carrier, warehouseman, and such other facility.

RELEASE. Shipper desiring to receive benefit of the rates provided by Carrier's current tariff that may lawfully apply when merchandise is shipped at a released or declared valuation, hereby stipulates that the goods covered by this bill of lading are each and all of the value of $ per ..... and that in no event shall Carrier be liable in excess of said last declared value.

98

SEE CONDITIONS ON BACK HEREOF

SHIPPER

CONDITIONS

(a) With respect to Pacific Coast water carriage:

IT IS MUTUALLY AGREED (1) that the Water Carrier has liberty to make deviations, to call with or without pilot, to tow and assist vessels in distress or to be towed, [illegible] to convey goods to ports or places in any order for any purpose, to transfer goods to other vessels, to proceed to or stay at any port or place whether in or out of the ordinary course of her voyage to ship or transship the goods to their destination, by any other ship.

2 That the Carrier shall not be liable for loss or damage occasioned by reasons beyond its control, by the perils of the sea or other waters, by fire from any cause or wheresoever occurring, by barratry of the master or crew, by enemies, pirates or robbers, by arrest or restraint of princes, rulers or people, by compliance with the orders or instructions of any civil, military or naval officials or authorities, whether legal or illegal, and whether incidental or not to any state of war at any time existing, by riots, mobs, strikes or stoppage of labor, whether lawful or unlawful, by lockouts, by explosions, bursting of boilers, breakage of machinery or breakdown of or defects in any vessel, defect in hull, machinery or appurtenances, or by unseaworthiness, fault in reading or other mistake of navigation of whatsoever kind (even when occasioned by the negligence, default or error in judgment of the pilot, master, mariners, or other servants of the shipowners, not resulting, however, in any case from want of due diligence by the owners of the Ship or any of them, or by the ship's Husband or Manager), nor for loss or damage occasioned by frost, heating, climatic temperatures or boiler, decay, putrefaction, rust, sweat, vermin, change of character, drainage, leakage or breakage, bent marks, or injury from bents, injury to or rotting of wrappers or packages, contact with or sweat or evaporations from any other goods, nor for any claim for breakage, scratching, denting, bruising, marking or discoloration of marble or machinery, addresses or descriptions, nor for rusting at any time, nor for any loss or damage arising from the nature of the goods or the insufficiency of packages, nor for concealing, misdescribing or misdescription of the goods, nor for risk of craft, nor for transhipment, nor for any loss or damage by explosion or spontaneous combustion of the cargo, nor for any claim whatsoever unless notice of loss or damage and general nature of same be given in writing to the Carrier or its Agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof, or if the loss or damage be not then apparent, within three days after such removal and it be proved that the goods were in the custody of the Carrier up to the time of removal.

3 That the Carrier shall not be liable for Gold, Silver, Bullion, Specie, Documents, Jewelry, Pictures, Statuettes, Porcelain, Works of Art, Glass, Pare China, Glass, Porcelain, Watches or Clocks in any respect, nor for goods of any description whatever above the value of $5.00 per cubic foot, and in no case is the carrier to be liable for goods the value of which is beyond $100 per package unless bills of lading are signed therefor with the value therein expressed and a special agreement is made.

4 That shippers shall be liable for any loss or damage to ship or cargo caused by inflammable explosive or dangerous goods shipped without full disclosure of their nature, whether such shipper be Principal or Agent, and such goods may be thrown overboard or destroyed at any time, without compensation.

5 That the Carrier shall have a lien for any right of action over the goods for all freights, primages and charges, and also for loss or damages which the Ship or Cargo may incur or suffer by reason of the illegible, incorrect or insufficient marking, numbering or addressing of packages or descriptions of their contents or any other particulars required by the authorities at the port of delivery and also for the expenses of ascertaining any such loss. And that if no sale of the goods at destination for freights, loans and charges, the proceeds fail to cover said freights, loans and charges, the Carrier shall be entitled to recover the difference from the Shipper.

6 That the Master of the Ship, and owners or agents of the line or railway company, shall have a lien on the goods, not only for the freight and charges herein and for all previous sums and liabilities incurred in respect of any charges stipulated herein, to be borne by the owners of the goods, but also for all previously ascertained freight and charges due to them by the consignees, and whether payable in advance or not. That the Shipper and/or an owner of the goods are liable together and separately for such freight and charges and for all other expenses incurred in the onset of goods ascertained or refused by consignees and sold by Company's Agents or by Customs, and remaining sufficient to pay same in full.

7 That in case the Ship shall be prevented from reaching her destination, by Quarantine, the Carrier may discharge the goods into any depot or hospital, and such discharge shall be deemed a final delivery under this contract, and all the expenses thereby incurred on the goods shall be a lien thereon and shall be paid by the owner of the goods on demand.

8 That the Ship may commence discharging immediately on arrival, and discharge continuously regardless of weather. The Collector of the Port (if there be one at the port of discharge) being hereby authorized to grant a general order for discharge immediately on arrival and upon discharge the responsibility of the Carrier shall cease and the goods shall be at the risk of the Consignees and if not taken by him within such time as is provided by the regulations at the Port of Discharge, they may be stored by the Carrier at the risk and cost of their owners. Payment of all delivery of the Cargo at their options to be done by the Agents of the ship at their tariff rates at the expense and risk of the receivers of the goods. Tonnage and wharfage dues shall be payable by the consignees of the goods. When the goods are carried to a port or place where there is no wharfinger, warehouseman or other responsible person to receive same on behalf of the consignee, the consignee shall be on hand to receive the goods, perhaps by package as discharged, and if the consignee is not on hand to receive the said goods package by package as discharged, the master may deliver the goods by depositing the same on any float, loading stage, wharf or on the sea shore or on the bank of the river, or other similar place at the risk of the goods at the place of destination.

9 That full freight is payable on outward or homeward cargo, but no freight is due on any homeward or home or outward journey in the absence of express agreement to the contrary during the voyage.

10 That notice of claims for short delivery must be given before the ship leaves her destination. The price shall be the market prices at the place and time of shipment, unless a lower value has been declared and unless written notice of any claim for loss or damage to any goods shall be given before taking delivery thereof.

11 The shipowner is not to be liable for any damage to any goods, however caused, which are capable of being covered by insurance, nor for any claim unless notice of such is not given before the removal of the goods, nor for claims for damage or detention to goods whether under through Bills of Lading or otherwise, where the damage is done or detention occurs while the goods are not in the possession of the Shipowner, nor in any case for more than the market price aforesaid ascertained or declared value of the goods whichever shall be the least.

12 Freight payable by weight is to be paid on the gross weight loaded from the ship, unless otherwise agreed, as to the mass of grain and seed. Parcels for different consignees collected or made up in single packages addressed to one Consignee to pay full freight on such parcel.

13 That goods destined to ports, places or docks other than the Ship's port place or dock of discharge are to be forwarded from thence at the expense and risk of their owners and subject to all conditions enacted by the Carriers who complete the transit.

14 That in the event of the vessel being prevented by ice obstructions or other circumstances of navigation from reaching destined port, the Master reserves the liberty of either landing Cargo at nearest open port he can reach with safety or bringing it back to port of shipment or transhipment in either case or where a rail and seaport, but charging ordinary freight only, or should the last named of the reasons have existed for the above mentioned port the goods may be sent to the port nearest to their destination with which there is direct communication or they may be warehoused at the intermediate port at the expense and risk of the owners of the goods.

15 In case the whole or any part of the goods specified herein be prevented by any cause from going to the ship, if any vessel herein, or be prematurely or loaded at an intermediate port the Carrier is only required to forward them by a preceding, or succeeding steamer of its line, or by the first available steamer of any other line, and incurs no further liability. The nonpayment to the Bill of Lading as to the shipment of the goods shall not be nevertheless against the Carrier if such goods or part thereof are not so shipped, and notwithstanding that notes to that effect be not given.

16 That the Bill of Lading duly endorsed, be given up in exchange for delivery order

17 That all freights payable at port of discharge in gold or its equivalent.

18 That in accepting this Bill of Lading, the shipper acting for himself and on behalf of the owner and/or consignee of the goods and the holder of the Bill of Lading agrees to be bound by all its terms, stipulations, exemptions and conditions, whether written or printed, as being the contract on which the rate of freight is based, and that it is binding on such shipper and/or owner and/or consignee, as fully as if the said terms, stipulations, exemptions and conditions were all signed by them, notwithstanding any customs or usage of any port of which the vessel may load or discharge which may in any respect vary or conflict with any of the terms, stipulations, exemptions and conditions. Connecting Carriers their servants and employees shall not be held to be the agents, servants or employees of the Carrier or for its actions, and not liable, shall attach to the goods on the Bill of Lading for any goods not carried by her which may be conveyed hereby and the Ship's contract is completed on discharging or having provided the identical goods delivered to her or her part of loading, irrespective of the descriptions of same in the Through Bill of Lading.

19 Also that in the event of the owner agent charterer or master or anyone on behalf of the Carrier paying any claim for loss of or damage to any of the said goods, they shall be subrogated to that extent in the rights of the owner shipper, consignee, and or insured with respect to any insurance that may have been effected upon or on account of the said goods, and entitled in every way to the full benefit of any such insurances with respect to the amount so paid.

20 That the Master of the Ship and owners or agents shall have a lien on and right of sale over the goods not only for the freight and charges herein and for all payments made and liabilities incurred in respect of any charges stipulated herein, to be borne by the owners of the goods but also for all previously ascertained freight and charges due to them by the consignees, and whether payable in advance or not. That the shipper and/or owner of the goods are liable together and separately for such freight and charges and for all other expenses incurred in the onset of goods ascertained or refused by consignees and sold by company's agents or by Customs, and remaining sufficient to pay same in full.

21 Carrier is not required to notify Consignees of arrival of goods

22. General Average payable according to York Antwerp Rules, 1890, and as the shipowners option as to matters not provided for in York Antwerp Rules according to the laws and usages of the Dominion of Canada or the port of delivination. If the owner shall have exercised due diligence to make the ship, in all respects, seaworthy and to have her properly manned, equipped and supplied, in so hereby agreed that, in case of danger, damage or disaster resulting from fault or error in navigation, or in the management of the ship, or from any latent defect in the hull, machinery or appurtenances, whether existing at the time of shipment or at the beginning of the voyage, the consignees of the goods or the owners of the ships shall not contribute with the shippers in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred for the common benefit, or to relieve the adventure from any common perils all with the same force and effect and to the same extent as if such danger, damage or disaster had not resulted from or been occasioned from faults or errors in navigation, or in the management of the ship or from the negligence of the owner mariners, engineers or pilots or from any latent defect, or unseaworthiness. The owners of the goods shall, before delivery of same make the average bond and pay to the ship or her agents such reasonable deposits towards the average expenses as they may require.

23 Special conditions: Pacific Coast water carriage shall also apply to goods to be subsequently forwarded by rail, until the goods are actually on board cars and no rail shipments to be subsequently forwarded by Pacific Coast water carriage from these goods are solicited from ours.

24. This Bill of Lading is issued subject to all the terms and provisions of, and all the exemptions from liability contained in "THE WATER CARRIAGE OF GOODS ACT" enacted by Dominion Parliament of Canada, Chap. 61 of Statutes of Canada, 9-10 Edw. VII, Section 4 of which is as follows

"4. Where any Bill of Lading or similar document of title to goods contains any clause, covenant or agreement whereby:

(a) The owner, charterer, master or agent of any ship, or the ship itself, is relieved from liability for loss or damage to goods arising from negligence, fault or failure in the proper loading, stowage, custody, care or delivery of goods received by them or any of them to be carried in, or by the ship; or

(b) any obligations of the owner or charterer of any ship to exercise due diligence to properly man, equip and supply the ship, and make and keep the ship seaworthy, and make and keep the ship's hold, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation are in anywise lessened, weakened or avoided; or

(c) the obligations of the Master, officers, agents or servants of any ship to carefully handle and stow goods, and to care for, preserve and properly deliver them, are in anywise lessened, weakened or avoided; such clause, covenant or agreement shall be illegal, null and void, and of no effect unless such clause, covenant or agreement is in accordance with the other provisions of this Act."

(b) With respect to Railway Carriage

The following conditions are the only conditions applicable to the shipment while being transported by rail and do not apply to Pacific Coast water carriage

Sec. 1 The Carrier of any of the goods herein described shall be liable for any loss thereof or damage thereto except as hereinafter provided.

Sec. 2 In the case of shipments from one point in Canada to another point in Canada, or where goods are shipped under a joint tariff, the Carrier issuing the Bill of Lading, in addition to the other liabilities hereunder, shall be liable for any loss, damage, or injury to such goods from which the other Carriers is not by the terms of this Bill of Lading relieved, caused by, or resulting from the act, neglect, or default of any other Carrier on which such goods may be delivered in Canada, or under such joint tariff or over whose line or lines such goods may pass in Canada, or under such joint tariff to the same extent as if such loss had occurred on the line of the Carrier issuing the Bill of Lading. The Carrier issuing this Bill of Lading shall be entitled to recover from the other Carrier on whose line or lines the loss, damage or injury to the said goods shall have been occasioned, the amount of such loss, damage or injury, as it may be required to pay by reason thereof, or by reason of any judgment or proceedings thereof. Nothing in this section shall deprive the holder of this Bill of Lading or party entitled to the goods of any remedy or right of action, which he may have against the Carrier issuing this Bill of Lading or any other Carrier.

Sec. 3 The Carrier shall not be liable for loss, damage or delay to any of the goods herein described, caused by the act of God, the King's or public enemies, riots, strikes, defect or inherent vice in the goods, or the act or default of the shipper or owner, for differences in weights of grain, seed or other commodities caused by natural shrinkage or during transit, the consignee only can sue, and by the Carrier, unless the weights are evidenced by Government certificate, the authority of law or by examination, or for any damage or delay caused by the act or default of any person or persons employed by the Carrier or for which he or they are legally responsible, or for any damage or delay occurring while the goods are stopped and held in transit upon the request of the party entitled to make such request, or from any cause beyond the Carrier's control. When in accordance with general custom, on account of the nature of the goods, or at the request of the shipper the goods are transported in open cars, the Carrier issuing the Bill of Lading or any Carrier delivering the goods shall have the right to forward said goods by any railway or route between the point of shipment and the point of destination, but if such diversion be from a rail to a water route the liability of the Carrier shall be the same as though the entire carriage were by rail.

Sec. 4 No Carrier is bound to transport said goods by any particular train or vessel or on time for any particular market or otherwise than as required by him unless by specific agreement endorsed hereon. Every Carrier in case of physical necessity shall have the right to forward said goods by any railway or route between the point of shipment and the point of destination, but if such diversion be from a rail to a water route the liability of the Carrier shall be the same as though the entire carriage were by rail.

Sec. 5 In case of any loss or damage for which any Carrier is liable shall be recognized on the basis of the value of the goods at the place and time of shipment under this Bill of Lading (including the freight and other charges, if paid, and the duty if paid or payable, and not refunded) unless a lower value has been represented in writing by the shipper or has been agreed upon or is determined by the classifications or tariffs upon which the rate is based, in any of which events such lower value shall be the amount to govern such computation, whether or not such loss or damage arises from negligence.

When under the terms of the classification or special reduced tariffs, the goods are carried at owner's risk such conditions are intended to cover only such risks as are commercially incidental to transportation, and shall not relieve the Carrier from liability for any loss, damage or delay which may result from any negligence or carelessness of the Carrier or its agents or employees, and the burden of proving freedom from such negligence or carelessness shall be on the Carrier.

Sec. 6 Unless notice of claim be given in writing to the Agent at the point of delivery, or to the Carrier at the point of origin, within four months after delivery of the goods, or in case of failure to make delivery then within four months after a reasonable time for delivery has elapsed, the Carrier shall not be liable.

Any Carrier or party liable on account of loss of or damage to any of said goods on membership to the terminal the proceeds paid in respect thereof shall have the full benefit of any recourse that may have been effected upon or on account of said goods as far as this shall not affect the priority or recourse of insurance.

Sec. 7 Goods to be delivered to a point where the Carrier has no elevator or licensed elevator or warehouse, may be there delivered and placed with other grain of the same kind and grade, or in case of mixed goods, equivalent thereto, in such elevator or warehouse, at the option of the Carrier, and such delivery if it is to be there, unless the grain is not promptly accepted after arrival has been given to the consignee, or his agent, or the person entitled thereto.

Sec. 8 Goods not removed by the party entitled to receive them within forty-eight hours (exclusive of legal holidays) or in the case of bonded goods, within seventy-two hours (exclusive of legal holidays) after arrival before has been sent or given may be kept in our station or place of delivery, or warehouse of the Carrier subject to a reasonable charge for storage and to the Carrier's responsibility as warehousemen only, or may, at the option of the Carrier after written notice of the Carrier's intention to do so has been sent or given, be removed to and stored in a warehouse or elsewhere at the risk of the owner and there held at the risk of the owner and without further notice to the owner of the Carrier's action in so doing, the Carrier shall be entitled to receive the storage charges and to a lien for all charges and expenses of removal and storage.

Goods to be loaded shipped from a private siding or a station, wharf or loading where there is no duly authorized agent shall be at the risk of the owner until the car is billed or Bill of Lading is issued by the Carrier and thereafter shall be at the risk of the Carrier. Goods to be loaded destined to a private siding or station, wharf or loading where there is no duly authorized agent, shall be at the risk of the Carrier until placed on the delivery siding.

All goods shall be subject to customary compress and lifting, at owner's cost.

Sec. 9 No Carrier shall be bound to carry any documents, specie or any articles of extraordinary value not specifically stated in the published classifications or tariffs unless a special agreement to do so in the form of a special agreement and the nature of such goods is therein expressed, and a stipulated value of the articles are endorsed hereon. If such goods are carried without a special agreement and the nature of the goods is not disclosed hereon, the Carrier shall not be liable for any loss or damage thereto.

Sec. 10 The owner or consignee shall pay the freight and all other lawful charges accruing on said goods, and if required shall pay the same before delivery. If upon inspection it is ascertained that the goods shipped are not those described in this Bill of Lading, the freight charges must be paid upon the goods actually shipped, with any additional penalties lawfully payable thereon.

Sec. 11 Except in case of alteration from rail to water routes, which is provided for in Section 6 hereof, and except as provided hereafter, if all or any part of said goods is carried by water over any part of said route such water carriage shall be performed subject to the liabilities, limitations and exemptions provided by statute and to the conditions contained in this Bill of Lading, not inconsistent with such statute or the provisions and conditions of this section which are hereby adopted and incorporated herein, and no Carrier by water carrying said goods shall be liable for loss thereof or damage thereto arising from the perils of the lake sea or other waters, or from explosion, bursting of boilers or breakage of shafts not arising from the negligence of the Carrier or from any latent defect in hull, machinery or appurtenances, or from collision, stranding or other accidents of navigation, or from prolongation of the voyage. And any vessel carrying any or all of the goods herein described shall be at liberty to call at intermediate ports, to tow and be towed, and assist vessels in distress, and to deviate for the purpose of saving life or property.

The term "water carriage" in this section shall not be regarded as including lighterage or car ferriage across rivers or in lake or other harbors, and the liability for such lighterage or car ferriage shall be governed by the other sections of this contract. If the goods are being carried under a tariff which provides that any Carrier or terminal party thereto shall be liable for loss from perils of the sea, then as to such Carrier or Carriers the provisions of this section shall be modified in accordance with the provisions of the tariff which shall be treated as incorporated into the conditions of this Bill of Lading.

Sec. 12 Every party, whether principal or agent, shipping explosives or dangerous goods without previous full written disclosure to the Carrier or its agents of their nature shall be liable for all loss or damage caused thereby and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

Sec. 13 No alterations, additions or erasure in this Bill of Lading shall be signed or initialed in the margin by an agent of the Carrier issuing the same and if not so signed or initialed shall be without effect, and this Bill of Lading shall be enforceable according to its original tenor.

And FINALLY in accepting this Bill of Lading, the Shipper, Owner and Consignee of the goods and the holder of the Bill of Lading agrees to be bound by all its stipulations, exemptions and conditions, whether written or printed, as fully as if they were all signed by such Shipper, Owner, Consignee or Holder.

RESPONDENT'S EXHIBIT "I."

[Letter-head of Williams, Dimond & Co.]

Dec. 18, 1919.

San Francisco, December 16th, 1919.

No. 500—EO

California Wine Association,
216 Pine Street,
San Francisco.

Gentlemen:

SS. "WEST ALETA."

This will confirm reservation of space for your account covering shipment of 2000 barrels of Wine to be forwarded from here to Rotterdam on the above named steamer, as per our telephone conversation of even date.

1000 barrels of Wine, previously booked for shipment on this steamer have been transferred for shipment on the SS. "Cockaponset." This leaves a total of 4100 barrels of Wine to be forwarded from here to Rotterdam on the SS. "West Aleta."

We are now issuing shipping permits and receiving cargo on Pier 28 for this steamer.

Thanking you for your kind co-operation, and awaiting your further pleasure, we remain

Yours faithfully,

WILLIAMS, DIMOND & CO.,
Managers & Operators.
F. A. HOOPER,
General Freight Agent.

[Endorsed]: United States District Court. No. 17,692. Respondent's Exhibit "I." Filed Jan. 2, 1925. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

No. 4748. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jan. 4, 1926. F. D. Monckton, Clerk.

RESPONDENT'S EXHIBIT "J."

[Letter-head of Williams, Dimond & Co.]

San Francisco, December 8th, 1919.

No. 500—EO

Messrs. Rosenberg Bros. and Co.,
334 California St.,
San Francisco.

Gentlemen:

Attention, Mr. Higgins.
SS. "WEST ALETA."

Referring to your favor of the 4th instant, file HRH,—this will confirm reservation of space for your account covering shipment of 500 tons of Rice or Beans to be forwarded from here to Hamburg on the above-named steamer.

We will advise you in due course as to when we will commence issuing shipping permits and receiving cargo for this steamer.

Thanking you for this business, and awaiting your further pleasure, we remain

Yours faithfully,
WILLIAMS, DIMOND & CO.,
Managers & Operators.
F. A. HOOPER,
General Freight Agent. O

[Endorsed]: United States District Court. No. 17,692. Respondent's Exhibit "J." Filed Jan. 2, 1925. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

No. 4748. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jan. 4, 1926. F. D. Monckton, Clerk.

RESPONDENT'S EXHIBIT "K."

[Letter-head of Williams, Dimond & Co.]

San Francisco, December 10th, 1919.

No. 500—EO

Messrs. Rosenberg Bros. and Co.,
334 California Street,
San Francisco.

Gentlemen:

SS. "WEST ALETA"

This will confirm reservation of space for your account covering shipment of 250 tons of Rice and Beans to be forwarded from here to Hamburg on the above named steamer.

We will advise you in due course as to when we will commence issuing shipping permits and receiving cargo for this steamer.

Thanking you for this business, and awaiting your further pleasure, we remain

Yours faithfully,
WILLIAMS, DIMOND & CO.,
Managers & Operators.
F. A. HOOPER,
General Freight Agent.

[Endorsed]: United States District Court. No. 17,692. Respondent's Exhibit "K." Filed Jan. 2, 1925. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

No. 4748. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jan. 4, 1926. F. D. Monckton, Clerk.

RESPONDENT'S EXHIBIT "L."

CALIFORNIA WINE ASSOCIATION,
216 Pine Street,
San Francisco, California.

January 23, 1920.

Fireman's Fund Insurance Co.,
California & Sansome Sts.,
San Francisco, Cal.

(Received Jan. 23, 1920. H. D. S.)
(Please refer your reply to AB/BL).

Gentlemen:

Attention: Mr. SWALES.

Please be advised that the following is our final and complete specifications for insurance per the Stmr. "WEST ALETA" which sailed from San Francisco on or about January 6th.

To Cardiff, Wales, 11000 barrels wine—valuation $456955.00.

To Rotterdam, 1108 barrels Brandy—1250 barrels wine—valuation $120493.00.

To Rotterdam (marked Geneva), 1742 barrels wine —valuation $65423.00.

The above is to cover insurance for both Marine and War risk. We understand that the Geneva lot is to be insured as far as Rotterdam only.

Will you kindly send policies to us at the earliest possible moment?

Very truly yours,
CALIFORNIA WINE ASSOCIATION.
By A. BARRICKS,
Assistant Sales Manager.
J. M. B.

[In pencil]:

456955
120493
65423

642871

[Endorsed]: United States District Court. No. 17,692. Respondent's Exhibit "L." Filed Jan. 6, 1925. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

No. 4748. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jan. 4, 1926. F. D. Monckton, Clerk.

RESPONDENT'S EXHIBIT "M."

No. 2471

WILLIAMS, DIMOND & CO.

AGENTS

San Francisco, 1/2 19——

Freight Clerk—W. Aleta.

Please receive the under mentioned goods from S. L. Jones & Co.

Destination—Hamburg.

Marks and Numbers	Packages	Contents	Meas.	Weight
Joseph	1 cs	samples—Cd fish,	2	50
Herrscher		copra cake, cocoa		
Hotel Bristol		beans, milk, jams, beans, prunes		
Berlin		Dec 78040		
Germany		Strapped		

NOTICE—This is simply a shipper's permit, and does not bind the vessel to receive the goods.

Packages in bad order must not be received, but must be returned to be put in good shipping order.

All goods at owner's risk while on wharf awaiting loading.

Freight will not be received after 1/2/24

WILLIAMS, DIMOND & CO.,

Agents.

PERMIT

Per DE BENJAMIN.

U. S. P.C.O. 20M 2-19

THE UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

Bill of Lading—Pacific Form

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Received in apparent good order and condition, from H. L. Jesse & Co.

at San Francisco, ; marked and numbered as below (weight, quality, contents and value unknown) to be transported by the ship Wm. Hale, now at or to arrive at the port of shipment, to be carried upon said vessel or any other vessel operated by or on account of the United States Shipping Board Emergency Fleet Corporation or the United States Shipping Board, with leave to sail with or without pilots, to tranship to any other vessels operated by said Corporation, or said Board, or for its account, to lighter from vessel to vessel and from vessel to shore, to tranship either by rail, lighter or otherwise, to transfer to and from hulk, and to touch at any port or ports, in any rotation or order in, or out of, the customary route and to call at any port or ports more than once, unto the port of Bremen (or so near thereto as the vessel may safely get), and there deliver in like apparent good order and condition, at the vessel's tackles, unto Order or assigns, freight being paid as hereinafter set forth, they paying average accustomed (if any incurred). Hotel Bristol, Berlin.

Marks and Nos.	Packages	Contents	Gross Weight
Joseph Herrmann Hotel Bristol Berlin, Germany United States District Court No. 17692 vs. Respondent's Exhibit No. M. Jan. 6, 1925 WALTER B. MALING, Clerk J. W. Schaarbye Deputy Clerk	1 Case	Samples - Cd. Fish, Copra Cake, Cocoa Beans, Nuts, Jute, Rope, Prunes	50 Lbs.
		The vessel shall have liberty for the purpose of ... trial trips and shall ... reasonable increased ... cargo insurance, if any, ... in consequence thereof.	
			4748

Freight Charges

XX 50# - MINIMUM B/L $3.25

SAMPLES RATE 100# MINIMUM;

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT
FILED
JAN 4 - 1926
F. D. MONCKTON
CLERK

Rates, weight and/or measurement subject to correction.

Prepaid freight to be considered as earned and not to be repaid to shipper, even if there be a forced interruption or abandonment of the voyage at the port of loading, a port of distress, the port of delivery or any other port into which the ship may put or be taken, and even if the vessel or goods be lost, delayed or damaged at any stage of the entire transit, and/or after goods be unloaded from the vessel, without negligence on the part of the master with negligence in navigation or management of the vessel, and not to contribute in General Average; and on the happening of any of the contingencies herein mentioned the said vessel is to have the right to forward the above mentioned cargo to the port of destination, and shall receive extra compensation for such service, whether performed by the vessels operated by or on account of the United States Shipping Board Emergency Fleet Corporation, or the United States Shipping Board, or those of strangers; and in case of salvage services rendered to aforesaid merchandise or treasure during the voyage by a vessel operated by or on account of the United States Shipping Board Emergency Fleet Corporation, or by the United States Shipping Board, such salvage services shall be paid for as fully as if such salving vessel or vessels belonged to strangers.

It is mutually agreed that the ship shall have liberty to carry goods of all kinds, dangerous or otherwise, to tow and assist vessels in all situations, to deviate for the purpose of saving life or property; it is also agreed, should the ship put into a port of refuge, or be prevented from any cause from commencing with or proceeding in the ordinary course of her voyage, or should the goods or any part of them be shut out from the vessel, that the carrier is authorized but not compelled to forward or tranship the goods to their destination by any other vessel, steam, motor or sail, at shipper's risk.

It is also mutually agreed that the carrier shall not be liable for loss or damage occasioned by causes beyond its control, or by the perils of the sea or other waters, by fire from any cause or wheresoever occurring, by barratry of the master or crew, by enemies, pirates or robbers, by public enemies, arrest and restraint of princes, rulers or people, riots, strikes or stoppage of labor, by explosion, or bursting of boilers, breakage of shafts, or any latent defect in hull, machinery or appurtenances, by collision, stranding, or other accidents of navigation of whatsoever kind, even when occasioned by the negligence, default or error in judgment of the pilot, master, mariners or other servants of the shipowner or operator of the ship not resulting, however, in any case, from want of due diligence by the owner or operator of the ship or any of them, or by the ship's husband or manager, by unseaworthiness of the ship, even existing at the time of shipment or during the voyage, provided the owner or operator has exercised due diligence to make the vessel seaworthy, nor for or by heating, explosions of cargo, rats, decay, frost or any effects of climate, heat of hold, decay, putrefaction, decomposition, rancidity, rust, presence of foreign matter upon and/or in containers and/or upon and/or mingled with goods, injury to or soiling of wrappers or packages, chafing, sweat, change of character, smell, evaporation or damage from any other goods, drainage, leakage, breakage, rats, vermin, or damage or deterioration caused by fumigation or disinfection, or any loss or damage arising from the nature of the goods or the insufficiency of packages, or injury from hooks; nor for result of tearing or breaking or bursting of containers or packages; nor for land damages whether on wharf or elsewhere; nor for the obliteration, error, insufficiency, or absence of marks, numbers, addresses or descriptions; nor for risk of craft, hulk or transhipment, including any transfer on lighters; nor for any loss or damage caused by the prolongation of the voyage; nor for damages of any kind to articles perishable in their nature; that the carrier shall not be concluded as to the correctness of statements herein as to quantity, quality, weight, contents and value; and that the ship or ships on which such goods are carried are not warranted seaworthy as to any defect or deficiency not discoverable by due diligence of the owners.

It is also mutually agreed that the General Average shall be settled at San Francisco according to York-Antwerp Rules of 1890, and as to matter not therein provided for according to the law and usage of the Port of San Francisco.

This contract is subject to all the stipulations and agreements herein set forth on either side hereof, whether stamped or printed, whether or not usual or customary, and whether or not in one or several paragraphs. All said paragraphs are to be construed together.

AND FINALLY, in accepting this Bill of Lading, the shipper, owner and consignee of the goods and the holder of the Bill of Lading agree to be bound by all of its stipulations, exceptions and conditions, whether written or printed, as fully as if they were all signed by such shipper, owner, consignee or holder, and it is hereby mutually stipulated and agreed that this Bill of Lading shall have the effect of a special contract, whether or not signed by the shipper.

IN WITNESS WHEREOF, the Master or Agent of the said ship has affirmed to 2 Bills of Lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated in San Francisco, this 21 day of January, 1926

Accepted as to all the terms and conditions hereof.

SHIPPERS By WILLIAM [illegible] MASTER OR AGENTS

SHIPPERS ARE REQUESTED TO CAREFULLY READ THIS BILL OF LADING, WHICH CONSTITUTES THE CONTRACT BETWEEN THE SHIPPER OR AGENT OF THE OWNER OF THE PROPERTY CARRIED AND THE UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION.

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ADDITIONAL STIPULATIONS AND AGREEMENTS OF THIS BILL OF LADING

IT IS ALSO MUTUALLY AGREED:—

1. That the carrier shall not be liable for articles comprised in Section 4281 of the Revised Statutes of the United States unless written notice of the true character and value thereof be given at the time of lading and entered in the bill of lading.

2. Also, that for loss or damage to or delay in delivery of goods of any description, whether carried in bulk or in packages, the carrier shall not be liable for, and the shipper shall not demand, any greater sum than One Hundred Dollars ($100.00) for each short ton of such of said goods as are lost or damaged or delayed (and/or for each fraction of one short ton lost or damaged or delayed as aforesaid such proportion of One Hundred Dollars ($100.00) as the weight of such fraction bears to one short ton), each short ton that is shipped being represented and agreed by the shipper as being of no greater value than One Hundred Dollars ($100.00) (and/or a proportionate amount of One Hundred Dollars ($100.00) for each additional fraction of one short ton or for each shipment of less than one short ton), unless a greater value is stated by the shipper and a bill of lading given and agreed therefor stating such greater value.

3. Also that if for any reason whatsoever the carrier shall be liable in a different or greater amount than set forth in paragraph two, then the carrier in respect of goods of any description shall not be liable for and the shipper shall not demand any greater sum than One Hundred Dollars ($100.00) for loss or damage to or delay in delivery of any one package, each package being represented and agreed by the shipper as being in no event of a greater value than One Hundred Dollars ($100.00) unless a greater value is stated by the shipper and a bill of lading given and agreed therefor stating such greater value.

4. Also that the shippers shall be liable for any loss or damage to ship or cargo caused by inflammable, explosive or dangerous goods, shipped without full disclosure of their nature, whether such shipper be principal or agent; and that such goods may be thrown overboard or destroyed at any time without compensation.

5. Also, that if any bags of grain, coffee, cocoa, or similar cargo be landed slack or torn, the consignees shall accept such proportion of the sweepings as shall be allotted by the agents of the carrier, and the same shall be deemed a full settlement of any claim for loss in weight.

6. Also, that if, on account of weather, surf, earthquake, epidemic, quarantine, riot, war or other disturbance, blockade or interdict of the port of destination, command of government or governments, or any cause beyond the control of the carrier, it should be considered impracticable or unsafe, in the opinion of the master, to land the goods at the port to which they are destined, the master is to have the option of landing the goods at any other port which he may consider safe, or retain same on board until the vessel's return trip, or transfer same to another vessel, steam, motor or sail, at risk and expense of shipper, owner, or consignee of the goods; such landing or transfer shall be deemed a final delivery under this contract, and upon a letter being put into the postoffice addressed to the shipper, or consignee, if named in the Bill of Lading, stating the landing and where deposited, or to what ship the transfer is made, the carrier shall be relieved from all responsibility; and such goods shall be liable and a lien held thereon for all extra expenses incurred in consequence; and the master or carrier shall have the right under any and all circumstances, at his option, and without notice, to tranship the goods at carrier's expense, but at shipper's risk, at the port of shipment, or at any intermediate port, by any other vessel, steam, motor or sail.

7. Also, that the master of the vessel has the right of hiring lighters at the port of destination for the landing of the within goods, at the expense and risk of owner of said goods; and if this in his judgment is inexpedient, the goods to be taken from the ship's tackles, where the ship's responsibility shall cease, and to be taken from alongside by the consignee immediately the vessel is ready to discharge, or otherwise they will be landed by the master at the expense of the consignee, and at his risk of fire, loss or injury, as the authorities of the port of discharge shall direct.

8. Also, that if the owner or operator shall have exercised due diligence to make the vessel in all respects seaworthy and to have her properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster, resulting from faults or errors in navigation, or in the management of the vessel, or from any latent defect in the vessel, her machinery or appurtenances, or from unseaworthiness, whether existing at the time of shipment or at the beginning of the voyage (provided the latent defect or the unseaworthiness was not discoverable by the exercise of due diligence), the shipper, consignees or owners of the cargo shall, nevertheless, pay salvage, and any special charges incurred in respect of the cargo, and shall contribute with the shipowner in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred for the common benefit or to relieve the adventure from any common peril, all with the same force and effect, and to the same extent as if such danger, damage or disaster had not resulted from or been occasioned by faults or errors in navigation, or in the management of the vessel, or any latent defect or unseaworthiness.

9. Also, that the goods are to be received by the consignees by day and by night as fast as the vessel can deliver, consignees paying all landing charges and any extra charges incurred after the discharge, and necessary for the vessel's quick dispatch.

10. Also, that in case the carrier is liable for loss or damage to any goods or merchandise under this Bill of Lading, the total amount recoverable shall in any event be restricted to the cash value of such goods at the port of departure at the time of shipment, the carrier reserving the option of replacing or repairing such goods at his expense, and that all claims for partial loss or damage shall be ascertained and adjusted upon the same basis of value. No claim arising under this Bill of Lading is valid unless made in writing by consignees to carrier's agent at the port of discharge, if for matters discoverable in all or in part without opening the packages before removing the goods from the dock, or if for matters discoverable only by opening the packages, within ten days from the delivery thereof, or if for non-delivery of the goods, within twenty days after the discharge of the vessel, or her departure from port of delivery. No suit shall be commenced on any claim under this Bill of Lading after six months from the delivery of the goods to the consignee, or if said claim is for non-delivery, after nine months from the receipt thereof by the carrier; in default of which making of such claim or filing of suit, such claim for loss or damage shall be deemed to be waived and the carrier discharged therefrom.

11. Also, that any carrier or party liable on account of loss or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, and the carrier may deduct from any claim hereunder the amount of any loan made by any insurer on the goods carried hereunder, to the shipper or owner of the cargo, which loan is made pending any claim for insurance on such goods.

12. Also, that when oil or other fluids are carried in receptacles of any kind, the carrier shall only be liable for leakage, all of which is shown affirmatively by the shipper as to each such receptacle to be solely due to negligence, fault or failure in proper loading, stowage, custody, care or proper delivery, and in the event of any leakage the consignees shall accept such proportion of the oil or other fluid which has leaked from its receptacles (and from any other receptacles on said vessel containing oil or other fluids) and run into the bilges, or elsewhere, as may be allotted by the carrier or his agents, and such allottment shall be deemed a full settlement for any loss in weight.

13. Also, that all expenses of cooperage, of repairs to packages, of bailing or rebaling, or sacking or resacking of goods, incurred by the carrier, shall be repaid to the carrier by the shipper, and the carrier shall have a lien for such charges upon all goods of the shipper concerning whose goods such expenses were incurred.

14. Also, that the carrier shall be liable only for loss of or damage to goods, all of which loss or damage is affirmatively shown and proved by the shipper to be solely due to the carrier's failure to use due diligence properly to equip, man, provision and outfit said vessel and to make said vessel seaworthy and capable of performing her intended voyage or solely due to the carrier's negligence, fault or failure in proper loading, stowage, custody, care or proper delivery of said goods or merchandise.

15. Also, that all questions arising under this Bill of Lading shall be settled according to the principles of the law of the United States, being the law of the flag of the vessel; nothing herein contained shall prevent the shipowner or operator from claiming the benefits of the United States Revised Statutes, 4281 to 4287, and the rules from time to time made thereunder and of the provisions of the Act of Congress of the United States approved on the 13th day of February, 1893, entitled "An Act Relating to Navigation of Vessels, etc." Provided that in all cases where merchandise or property is transported under this contract from or between ports of the United States and foreign ports within the meaning of the said Act of Congress of 1893, and proceedings are taken in the United States of America against the carrier or vessel carrying the goods, then the provisions of the said Act of Congress and Revised Statutes shall be held to apply to this contract, and the shipments shall be subject to all the terms and provisions of, and all exemptions from liability contained in the said Act of Congress and Revised Statutes; and any provisions in the Bill of Lading inconsistent with the said Act of Congress and Revised Statutes shall be treated as struck out and expunged, and all provisions herein shall be construed in connection with the provisions of such Act and be valid as far as consistent therewith.

16. Also, that as to all goods landed at Manila or at other Philippine ports, the cargo, in accordance with the regulations of the Philippine's customs service, is to be conveyed, by the ship's agents, at consignee's risk and expense, from the steamer to the Custom House wharf, and there delivered into the custody of the United States Custom House, for account of the consignee; and such delivery shall constitute a full discharge of the carrier's obligation, under this bill of lading, unless it be made to appear that exception was taken to the sufficiency of the delivery, by the customs authorities or employees when the goods were delivered into their custody. In the event of such exception being taken, notice of any claim intended to be made for shortage, loss or misdelivery of, or any damage to cargo, shall be presented by the consignees or their agents, in writing, to the ship's agents at Manila, within ten days after the completion of the discharge of the vessel, and in default of such notice the claim shall be deemed to have been waived, and neither the vessel, her owners, agents or master shall be liable therefor.

17. Also, that if made at a Canadian port, this shipment is subject to all the terms and provisions of, and all the exemptions from liability contained in the Water Carriage of Goods Act, 1910.

18. Also, that if the shipment hereunder is made at an Australian port, this Bill of Lading is to be read and construed as if every clause therein contained which is rendered illegal or null and void by the Sea Carriage of Goods Act, 1904, had never been inserted therein or had been cancelled and eliminated therefrom prior to the execution thereof, and is issued subject to all the terms and provisions of and to all the exemptions from liability contained in such Act.

19. Also, in case the shipment hereunder is made from any port on the Pacific Ocean to any port on the Atlantic Ocean, the carrier shall have the right to carry the same via Panama Canal or Straits of Magellan or Cape Horn, or as heretofore set forth to tranship.

20. Also, that the carrier shall not be responsible on shipments of lumber, logs, staves, etc., for number of pieces in bundles or broken bundles, nor for splits, cracks, flaws or discolorations.

21. Also, that in view of the operation of this vessel by or on account of the United States Shipping Board Emergency Fleet Corporation, or the United States Shipping Board, no lien shall attach to said vessel for any alleged breach of this contract and that any and all claims to any lien thereon are hereby expressly waived.

22. Also, that if the shipper hereunder is the charterer of the vessel named herein, then all provisions of the charter of the vessel shall prevail when in conflict with this Bill of Lading.

23. Also, that all clauses, terms and conditions binding upon the shipper under this bill of lading shall also be binding upon the owners and consignees of goods, although not specifically referred to.

RESPONDENT'S EXHIBIT "N."

ROSENBERG BROS. & CO.
334 California Street.

Cable Address
"Rosenberg"
All Codes.

San Francisco, Cal., Dec. 4, 1919.
In Reply Please Refer to File HRH.
Williams, Dimond & Co.
Received S. F.
Dec. 5, 1919.
Ans'd 12/8. O.

Williams, Dimond & Co.,
310 Sansome St.,
San Francisco, Cal.

Gentlemen:

Confirming 'phone conversation with Mr. Clark:

Please book for our account 500 tons of rice or beans to Hamburg, on S. S. "West Aleta."

[In pencil:] Firm Please Confirm.

We thank you for option on an additional 1000 tons on this ship, good until night of the 8th inst.

Yours truly,
ROSENBERG BROS. & CO.

LB

[Endorsed]: United States District Court No. 17,692. Respondent's Exhibit "N." Filed Jan. 7, 1925. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

No. 4748. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jan: 4, 1926. F. D. Monckton, Clerk.

RESPONDENT'S EXHIBIT "O."

December 10th, 1919.

500–EO.

Messrs. Rosenberg Bros. and Co.,
334 California Street,
San Francisco.

Gentlemen:

SS. "WEST ALETA."

This will confirm reservation of space for your account covering shipment of 250 tons of Rice and Beans to be forwarded from here to Hamburg on the above named steamer.

We will advise you in due course as to when we will commence issuing shipping permits and receiving cargo for this steamer.

Thanking you for this business, and awaiting your further pleasure, we remain

Yours faithfully,

H.

[Endorsed]: United States District Court. No. 17,692. Respondent's Exhibit "O." Filed Jan. 7, 1925. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

No. 4748. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jan. 4, 1926. F. D. Monckton, Clerk.

Office Supreme Court, U. S.
FILED
NOV 21 1927

In the Supreme Court of the United States

OCTOBER TERM, 1927

No. 119

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, PETITIONER

v.

ROSENBERG BROTHERS & COMPANY

No. 120

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, PETITIONER

v.

CALIFORNIA WINE ASSOCIATION

No. 121

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, PETITIONER

v.

S. L. JONES & COMPANY

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE PETITIONER

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In the Supreme Court of the United States

OCTOBER TERM, 1927

No. 119

UNITED STATES SHIPPING BOARD EMERGENCY FLEET Corporation, petitioner

v.

ROSENBERG BROTHERS & COMPANY

No. 120

UNITED STATES SHIPPING BOARD EMERGENCY FLEET Corporation, petitioner

v.

CALIFORNIA WINE ASSOCIATION

No. 121

UNITED STATES SHIPPING BOARD EMERGENCY FLEET Corporation, petitioner

v.

S. L. JONES & COMPANY

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE PETITIONER

OPINIONS OF THE COURTS BELOW

Two opinions were filed in the District Court. They appear at pages 21 and 671 of the record and are reported in 295 Fed. 372 and 7 F. (2d) 893.

The opinion of the Circuit Court of Appeals appears at page 845 of the record and is reported in 12 F. (2d) 721.

JURISDICTION

The decrees of the Circuit Court of Appeals (R. 856, 857, 858) were entered May 10, 1926. Rehearings were denied on June 14, 1926. (R. 865, 867.) The petition for certiorari was filed September 4, 1926. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

THE QUESTIONS PRESENTED

The questions presented in the petition for certiorari, in so far as they are here expressly relied upon, may be stated as follows:

1. Does the Suits in Admiralty Act, March 9, 1920, c. 95, 41 Stat. 525, provide an exclusive remedy and bar these actions because not commenced within the prescribed period?

2. If the Suits in Admiralty Act does not, *ex proprio,* bar these actions, nevertheless must the district court when determining laches be guided by analogy to Federal statutes relating to maritime causes rather than to varying State statutes of limitation?

3. Did the ship, being obligated by contract with each of the respondents to call also at the port of Hamburg, having advertised to sail for "Hamburg, Rotterdam, and Cardiff," carrying only nonperishable cargo, and being privileged under the bill of lading "to touch

at any port or ports, in any rotation or order in, or out of, the customary route and to call at any port or ports more than once," deviate, as to Cardiff and Rotterdam cargoes, by sailing directly for Hamburg (the most distant of the three) as her first port of call?

STATUTES

The pertinent statutes are printed in the argument or appendix.

STATEMENT

These are separate libels against the Fleet Corporation instituted by the respondents to recover the value of goods owned by them and shipped in December, 1919, and January, 1920, during the World War, under separate bills of lading, for carriage from San Francisco, California, to Rotterdam, Holland, and Cardiff, Wales, on the Steamship *West Aleta,* which carried also goods of these respondents under other bills of lading for Hamburg, Germany. The ship, owned by the United States, was seaworthy, properly manned and equipped. Through an error of navigation she stranded while off the coast of Holland, and, with her cargo, became a total loss. The respondents (libelants below) claim, and rely upon, a deviation, in that at the time of the stranding the vessel had passed the entrances to the ports of Cardiff and Rotterdam and was on her way to Hamburg, the most distant of the three intended ports of call. Petitioner denies that there was any deviation.

The three causes were consolidated and tried together in the District Court for the Northern District of California. Decrees in favor of the libelants were affirmed by Circuit Court of Appeals for the Ninth Circuit on May 10, 1926.

The principal facts are stipulated. (R. 77, 746, 808.)

The *West Aleta*, at all the times herein mentioned, was owned by the United States of America, documented in the name of the "United States, represented by United States Shipping Board," and was managed and operated by the Fleet Corporation through Williams, Dimond & Company, as operating agents, under written contracts dated September 18, 1919, between the United States Shipping Board Emergency Fleet Corporation and the said Williams, Dimond & Company. (R. 83, 90.)

Between December 4, 1919, and January 6, 1920, the vessel was advertised in "The Guide" and the "Daily Commercial News," leading commercial papers of San Francisco, in this language (R. 80, 106):

EUROPEAN PACIFIC LINE
Direct Sailings

* * * * *

S. S. *West Aleta*
(for Hamburg, Rotterdam and Cardiff)

* * * * *

WILLIAMS, DIMOND & CO.
Managers and Operators for
U. S. Shipping Board

Respondents Rosenberg Brothers & Company and S. L. Jones & Company were subscribers to the "Daily Commercial News." (R. 216.) All of the respondents were subscribers to "The Guide." (R. 214.)

The respondents shipped for carriage by her the following goods, for the value of which recovery is sought in these proceedings: Rosenberg Brothers & Company, twenty-one hundred and eighty sacks of rice for Rotterdam. California Wine Association, eleven thousand barrels of wine for Cardiff; eleven hundred and eight barrels of brandy and twenty-nine hundred and ninety-two barrels of wine for Rotterdam. S. L. Jones & Company, eighty-two cases of nutmegs for Rotterdam. In addition to the foregoing all of the respondents shipped merchandise by the same vessel to Hamburg. (R. III, p. 89 et seq.)

The ship sailed from San Francisco on January 6, 1920, under orders which directed the master to proceed—

> via the Panama Canal, and the most direct and safest route to Hamburg, Germany, which will be your first port of discharge. After discharging your Hamburg cargo, you will proceed to Rotterdam, Holland, to discharge the cargo you have for that port, and thence to Cardiff, England, your last port of call, where you will discharge your cargo for that port. (R. 57.)

She then had on board six hundred and sixty-one tons of merchandise for Hamburg, fifteen hundred

and three tons for Rotterdam, and two thousand six hundred and thirty-four tons for Cardiff, including goods consigned by shippers other than the respondents. The Cardiff and Rotterdam cargo consisted chiefly of barrels of wine, brandy, and oil, and were prudently stowed (R. 80) principally in the lower holds with the Hamburg cargo on top. The Wine Association contracted with express knowledge of such stowage and that Cardiff would be the last port of call (R. 219). Its insurance contract read "to Rotterdam and Cardiff"—in this order. (R. 553.)

The bills of lading issued to the respondents were identical in form, save as to description of goods, destination, name of shipper, etc. The Cardiff bill of lading (R. 752), which the court below properly declared might be considered as an exemplar, was signed by Williams, Dimond & Co., and acknowledged receipt of the goods therein described. It expressly gave the vessel—

> *leave * * * to touch at any port or ports, in any rotation or order in, or out of, the customary route and to call at any port or ports more than once.* (Italics ours.)

While proceeding along the direct and customary route to Hamburg, and after having passed the points at which the ship would have altered its course if intending to put in first at either Cardiff or Rotterdam, the ship struck a sand ridge which projected several miles northward from the westerly end of Terschelling Island, off the coast of Holland, shortly after two o'clock on the morning

of February 12, 1920, and with all her cargo became a total loss. (R. 81, 110.) The cause of the stranding was an error of navigation, for which, under Section 3 of the Harter Act, February 13, 1893, c. 105, 27 Stat. 445 (U. S. C., Title 46, Sec. 192), and under express provision of the bills of lading, the carrier is not liable on the contract, unless, as respondents contend, there was a deviation. The theory on which they rely is that by proceeding first to the most distant of the three ports of call and delivery the ship deviated, and thereby lost the benefit of provisions of the bill of lading and of the Harter Act and became liable as an insurer.

All of the cargo covered by the bills of lading here involved was insured under policies containing this clause (R. 553):

> Held covered, at a premium to be arranged, in case of deviation or change of voyage or of any omission or error in the description of the interest, vessel, or voyage.

The underwriters settled with the respondents in full and then instituted these libels as subrogees.

These suits were commenced, in the cases of the California Wine Association and Rosenberg Bros. & Company October 25, 1922 (R. 16, 723), and in the case of S. L. Jones & Company November 19, 1923 (R. 787)—thirty-two months and forty-five months, respectively, after the causes of action arose—February 12, 1920.

The District Court found for the libelants, stated the measure of damages to be the market value of

the goods at the ports of destination at the time the vessel should have arrived, and entered decrees against petitioner, which, on appeal, were affirmed by the Circuit Court of Appeals.

SPECIFICATION OF ERRORS

The Circuit Court of Appeals erred in holding in each case:

I. That the suit was not barred by the two-year limitation contained in the Suits in Admiralty Act.

II. That if the Suits in Admiralty Act is not applicable, the suit was not barred by laches, thus applying the analogy of the State statute of limitation instead of the Federal statutes.

III. In holding that there was a deviation.

IV. In affirming the judgment of the District Court.

SUMMARY OF THE ARGUMENT

(1) All these actions were brought against the Fleet Corporation in an admiralty court to recover damages *in personam* for maritime causes of action arising out of the operation by the Fleet Corporation of a vessel owned by the United States. These actions were, therefore, covered by the Suits in Admiralty Act.

In the *Eastern Transportation Company* v. *United States,* 272 U. S. 675, 690, this Court held that—

> there may be proper cases under the Act in which there is to be a remedy really *in personam* against the United States, and also

one in substance *in rem* against its vessels for which its own personal liability is substituted.

Since the *West Aleta* was owned by the United States, was acquired by authority of the Act of June 15, 1917 (c. 29, 40 Stat. 182;), and was managed and operated by the Fleet Corporation by direction of the President (Executive Order 2664, July 11, 1917) pursuant to the same Act, when the claims in question arose, the United States was liable for these claims.

The same remedies are given against the Fleet Corporation as against the United States, and since the statute provides remedies, a period of limitation, a rate of interest, a means of satisfying the judgment, including an appropriation (Sec. 8), for all maritime causes of action then existing or thereafter arising out of the operation by a corporation whose capital stock is entirely owned by the United States or a vessel owned or possessed "by the United States or by such corporation," it is submitted that the provisions of the Suits in Admiralty Act are exclusive and bar all actions such as these which were not commenced within the period therein prescribed.

(2) If, however, the Suits in Admiralty Act does not govern and bar these actions, they are, nevertheless, barred by laches. The uniformity so essential in admiralty requires that the court should have been governed by the two-year period of limitation prescribed in this and other Federal statutes governing maritime causes, rather than variant local

statutes—this Court having determined that "the period of time within which an action may be commenced is a material element in such uniformity of operation."

(3) Petitioner also maintains that under the liberties clause in the bill of lading—

> with leave * * * to touch at any port or ports, in any rotation or order in, or out of, the customary route and to call at any port or ports more than once,—

the *West Aleta* did not deviate in calling at Hamburg, Rotterdam, and Cardiff in the reverse of their geographical order.

ARGUMENT

I

THE SUITS IN ADMIRALTY ACT PROVIDED AN EXCLUSIVE REMEDY; AND THESE ACTIONS ARE BARRED BECAUSE NOT BROUGHT WITHIN THE TIME PRESCRIBED

These causes of action arose when the ship stranded, February 12, 1920. (R. 81.) The libels were filed October 25, 1922, in the Rosenberg Brothers and California Wine Association cases, and November 19, 1923, in the Jones & Company case. (R. 4, 710, 779.) The remedy provided by the Suits in Admiralty Act, Section 5, approved March 9, 1920, c. 95, 41 Stat. 525, expired by limitation March 9, 1921.

For the proper presentation of this question brief review of antecedent legislation is necessary. The Corporation was organized by the Shipping Board April 16, 1917, ten days after the entry of the United States into the war, by authority of Section

11 of the Shipping Act 1916 (c. 451, 39 Stat. 728, 731). By that section such a corporation could operate Government-owned tonnage only by order of the President after investigation and report to him by the Shipping Board that private operation was not practicable.

The Emergency Shipping Fund provision of the Act of June 15, 1917 (c. 29, 40 Stat. 182, 183), provided that all ships—

> heretofore or hereafter acquired by the United States

should be managed, operated, and disposed of

> as the President may direct.

The President, by Executive Order of July 11, 1917, delegated to the Shipping Board the operating powers vested in him.

The Act of July 18, 1918 (c. 157, Sec. 15, 40 Stat. 913, 916), provided that the net proceeds of all activities authorized by the Emergency Shipping Fund provision of the Act of June 15, 1917, and activities authorized by other specified legislation should be deposited in the United States Treasury in a separate and distinct fund, and might be expended by the President in carrying out the purposes of the Act of July 18, 1918. Among those purposes was the requisitioning of vessels, wharves, docks, and terminal facilities.

All of the aforementioned legislation, except as Section 11 of the Shipping Act was modified by the Emergency Shipping Fund provision of the Act of June 15, 1917, was in force, as was the Executive

Order, at the time of the shipments in question, in December, 1919, and January, 1920, and at the time of the loss of the vessel with her cargo on February 12, 1920; and the making of the bills of lading and all the operations of the *West Aleta* were subject to and by authority of this legislation and that Executive Order; and the operation of this vessel was financed, as all of the other activities of the Fleet Corporation were financed, by public appropriations. The Fleet Corporation's only activity in connection with the *West Aleta* was in the capacity of—

> an operating agency of that (United States Shipping) Board;

and it

> was known to be but an arm of the Board. (*The Lake Monroe,* 250 U. S. 246, 252, 254.)

Like the United States Grain Corporation it was—

> owned by the United States as an agency for public service, was not engaged in ordinary merchandising, but * * * was performing public functions arising out of the war and its sequels. * * * The very existence of the Corporation was created to carry on activities required by the war. Its property was held for that and no other end. (*United States Grain Corporation* v. *Phillips,* 261 U. S. 106, 111, 113.)

It was one of

> the instrumentalities created with reference to the needs of that war;

and to defraud it would have resulted—

> directly in a pecuniary loss to the United States, and even more immediately would have impaired the efficiency of its very important instrument. (*United States* v. *Walter,* 263 U. S. 15, 17, 18.)

In *King County* v. *Fleet Corporation,* 282 Fed. 950, and *United States* v. *Coghlan,* 261 Fed. 425, property of this Corporation was held exempt from state taxation because actually it was the property of the United States, and these two cases were cited approvingly by this Court in *Clallam County* v. *United States Spruce Corporation,* 263 U. S. 341, in holding that for a like reason property of the Spruce Corporation was tax free.

As regards the public aspect of their war-time activities under war legislation, this Court has classified the Grain Corporation, the Spruce Corporation, and the Fleet Corporation together, and has made no distinction between any two of them.

The Merchant Marine Act, 1920, approved June 5, 1920 (c. 250, 41 Stat. 988 et seq.), was before Congress at the time of the enactment of the Suits in Admiralty Act on March 9, 1920, so that consideration of certain provisions of the former Act may assist in the construction of the latter.

By Section 11 of the Shipping Act the life of the Fleet Corporation was limited to five years after the close of the war. By Section 12 of the Merchant Marine Act the Shipping Board was directed to continue ship operation until all of the Govern-

ment-owned merchant fleet shall be sold, and the life of the Corporation, with power to operate vessels, was continued until such time; and by Section 35 the Shipping Board was given authority to carry on ship operation directly or through the Fleet Corporation. These provisions were in contemplation when the Suits in Admiralty Act was passed. The remedy provided by that Act is available in all cases *ex delicto* as well as *ex contractu;* in all cases *in personam* as well as *in rem* (*Eastern Transportation Co.* v. *United States,* 272 U. S. 675); whether such operation is in the Government's "sovereign capacity as a war measure," as in the case of the *West Aleta,* or "for the purpose of advancing the trade of its people" (*The Pesaro,* 271 U. S. 562, 574) "for the proper growth of its foreign and domestic commerce" (Merchant Marine Act, 1920, c. 250, Sec. 1, 41 Stat. 988). In either case the vessels "are public ships in the same sense that warships are." (*The Pesaro, supra.*)

The Suits in Admiralty Act prohibits the arrest of any vessel owned, operated, or possessed by or for account of, and of any cargo owned or possessed by the Government, or any corporation of which it owns the entire outstanding capital stock (Sec. 1); provides for suits in admiralty against the Government, "or against such corporation, as the case may be," and that in either case service shall be upon law officers of the Government (Sec. 2); for decree against the Government or the Corporation, with interest, in the discretion of the court,

not exceeding four per centum, except in contract cases where a higher rate is fixed; for exemption from obligation to give a bond in any case; for cancellation of bonds previously given (Sec. 3); for release on suggestion of Government liability of any vessel arrested for a cause arising from previous possession, ownership, or operation of it by the Government or the Corporation, and the subsequent proceeding of the suit against the Government only (Sec. 4); for a limitation of two years after accrual in cases arising after the Act, and one year after the date of the Act in other cases, and confines the scope of the Act to cases arising after the entry of the United States into the war (Sec. 5); for payment with public money, for which the Act makes an appropriation, of any judgment, arbitration award or settlement made by authority of Section 9 (Sec. 8), which authorizes arbitration, compromise, and settlement by the Secretary of a department, the Shipping Board or the board of trustees of the corporation, "having control of the possession or operation of any merchant vessel" (Sec. 9); for recovery by the Government, *not by the corporation,* for salvage services performed by a vessel owned or operated by either, and payment of the proceeds into the public treasury to the credit of the department, the Board, or the corporation having such control (Sec. 10); for payment into the Treasury to the credit of the department, the Board, or the corporation having such control of all recoveries by the Government on causes "arising from, or in connection with, the

possession, operation, or ownership of any merchant vessel," for reimbursement of the appropriation or fund from which the loss, damage, or compensation for which such recovery is had has been or will be paid (Sec. 11); for the report to Congress at each session by the Attorney General of all judgments under the Act for or against the Government or the corporation, and a like report by the Secretary of any department, the Board, and the trustees of the Corporation of all final arbitration awards and settlements made by them respectively (Sec. 12).

This Act has provided a remedy for the satisfaction from Government money (Sec. 8) of all claims of a maritime nature arising out of the operation by this Corporation, or by or for the Government, of merchant ships. It treats the United States and all such corporations exactly alike in almost every respect—as to the remedy, the time to sue, the method of procedure, the measure of recovery, the source of satisfaction, which is the public treasury; it provides for the assumption by the Government of all obligations of such corporations (Sec. 3) and refers to the possession, ownership, and operation of vessels by any other than the Government or such a corporation as *private.* The provision for payment of decrees against the Corporation with public money stamps as public every activity that may form the basis of any such decree. *Chesapeake & Delaware Canal Co.* v. *United States,* 250 U. S. 123, 126; *Van Brocklin* v. *Tennessee,* 117

U. S. 151, 158; *United States* v. *Insley,* 130 U. S. 263, 265.

This Act has provided a system for adjudication and satisfaction of all obligations of this Corporation arising out of the possession, ownership, or operation of ships, and being the subject of admiralty jurisdiction. No other system is provided. Since the only possible recourse is on the public treasury, it is essential in order that the officers of the Treasury may be seasonably advised as to the demands on the Treasury, that the system be exclusive, and that a uniform period of limitation be applied. *Nichols* v. *United States,* 7 Wall. 122; *Arnson* v. *Murphy,* 109 U. S. 238, 243; *Nassau Smelting Works* v. *United States,* 266 U. S. 101; *United States* v. *Pfitsch,* 256 U. S. 547; *Smith* v. *Reeves,* 178 U. S. 436, 445; *United States* v. *Forbes,* 278 Fed. 331.

Both courts below held that this statute did not govern. The Circuit Court of Appeals declared (R. 854):

> The purpose of the Suits in Admiralty Act as construed in the decisions referred to, is to substitute an action *in personam* for one *in rem.* In our case the ship, having been wrecked off the coast of a foreign country, and not having been in any port of the United States at the time the libelants brought these suits, and not having been at that time a merchant vessel, suits *in rem* could not have been brought under the Suits in Admiralty Act.

Its opinion was dated May 10, 1926. On January 3, 1927, this Court definitely disapproved and rejected the theory thus accepted and relied upon. *Eastern Transportation Co.* v. *United States,* 272 U. S. 675, 690.

It was there decided that the remedy afforded by the Suits in Admiralty Act is coextensive with "the general *in personam* liability of the United States as the owner of an offending vessel, like that of a private owner." The statute treats on an exact parity the United States and "any corporation in which the United States or its representatives shall own the entire outstanding capital stock." The proceedings which it authorizes against one are authorized also against the other. The words are "a libel *in personam* may be brought against the United States or against such corporation." In view of the decision in *Eastern Transportation Co.* v. *United States* it necessarily follows that the remedy provided by the Act against "such corporation" is coextensive with its general *in personam* liability.

Thus it is clearly apparent that these proceedings might have been brought under the Suits in Admiralty Act. They must depend upon some Federal statute, for the District Courts have no jurisdiction save such as Congress may confer upon them. And since Section 13 of that Act expressly repealed "the provisions of all other Acts inconsistent herewith," seemingly it alone may be looked to to supply the remedy and to confer the jurisdiction.

These actions are not a mere matter of private concern; the United States has the only real and substantial interest. Judgments against the corporation are to be satisfied out of the public treasury, and the Act itself appropriates public funds for their payment.

A definite procedure is provided, the venue is fixed, but the cause may be transferred to any other District Court in the United States, process must be served upon the United States Attorney within the district, a copy shall be mailed to the Attorney General, such service and mailing shall be sworn to and shall constitute valid service on the corporation, interest shall be allowed at four per centum unless by contract a higher rate has been stipulated, the corporation may not be required to give bond, any bond given in a cause theretofore commenced shall become void upon suggestion of the interest of the United States, definite periods of limitation are provided, an authenticated copy of any judgment shall be presented for payment to the accounting officers of the United States, etc.

It appears from the respondents' brief (p. 12), opposing the petition for certiorari, that the Fleet Corporation is being sued under the general admiralty jurisdiction of the District Court "as a private corporation, in which capacity it is amenable to suit at such places as it transacts business."

The legislation as to the Fleet Corporation and the manner in which it operated and was financed is reviewed and stated in the recent case of the

United States ex rel. Skinner & Eddy v. *McCarl, Comptroller General,* decided October 10, 1927, by this Court. It is there shown how Government-owned private corporations, including the Fleet Corporation, were employed by the United States as its instrumentalities during the World War. The transactions which gave rise to this controversy arose out of the exercise by the Fleet Corporation of powers conferred upon it under the Act of June 15, 1917, which was one of the Acts referred to by the Court in that decision. Under such circumstances it would seem clear that whatever may be said as to the liability of the Fleet Corporation in its private capacity, these causes of action were those for which the United States was certainly liable. Considering the immense number of vessels of the United States which were operated by the Fleet Corporation during and since the War, and the very large number of claims which have been made against the Fleet Corporation and the United States in consequence of such operation, and that all of such claims if valid must be liquidated by the monies of the United States, the problem of adopting a method by which such claims could be settled and paid was one which was of prime importance to Congress. In the same way, the problem as to what should be done with Government-owned vessels, and how claims should be made, sued for, and paid where they arose out of the program of construction handled through the Fleet Corporation, was also of great importance

to the Government, and it is significant that the same Congress at which the Suits in Admiralty Act was passed, the Merchant Marine Act of 1920 was also passed; the first providing the method by which maritime actions should be instituted and prosecuted against the Fleet Corporation and the United States, and the second providing the manner in which Government vessels should be operated and liquidated, and how claims should be made and settled which arose out of or incident to the exercise by or through the President of any of the powers or duties conferred upon the President by any Act or parts of Acts thereby repealed. Notwithstanding the efforts of the Fleet Corporation in the case of *Sloan Shipyards Corporation* v. *U. S. Fleet Corporation,* 258 U. S. 549, to persuade this Court that suit would not lie against the Fleet Corporation on a cause of action accruing before the passage of the Merchant Marine Act, this Court held (p. 570):

> The fact that the corporation was formed under the general laws of the District of Columbia is persuasive, even standing alone, that it was expected to contract and to stand suit in its own person, whatever indemnities might be furnished by the United States.

It is the contention of the Fleet Corporation in this case that even though under this ruling the Fleet Corporation may be sued in a court of common law or equity for a cause of action within the jurisdiction of such courts, at the same time it is the law that if the Fleet Corporation is sued on a

maritime cause of action in an admiralty court where the cause of action arises out of the operation by the Fleet Corporation of a Government vessel, the Suits in Admiralty Act applies, and if as a matter of fact the suit was brought beyond the time limited in that Act for the bringing of such suits the cause of action is barred, and whatever effect the Shipping Act of 1916 (c. 451, 39 Stat. 728) and Sections 9 and 11 thereof and the statutes of the District of Columbia for the organization of private corporations may have on the question of the right to sue the Fleet Corporation, such right to sue that Corporation was withdrawn by the Suits in Admiralty Act as to all causes of action which come within its scope and tenor.

II

IN ANY EVENT THE ACTIONS WERE BARRED BY LACHES

After deciding that the Suits in Admiralty Act did not apply, the District Court held that the claims were not barred by laches in that "a court of admiralty sitting in this State will by analogy follow its statutes of limitations." (R. 687.) It accordingly applied the local four-year period applicable to cases based upon written contracts. The Circuit Court of Appeals accepted and approved the ruling of the District Court, and this notwithstanding the fact that it affirmed the decree seemingly on the theory that these are tort actions. If its theory was correct, then the three-year period of limitation (Secs. 337, 338, Kerr's Cyc. Codes Calif., 1920, Code

Civ. Proc. pt. 1) would have applied, and the suit of Jones & Co., having been commenced November 19, 1923, would be barred by laches—the cause of action having accrued February 12, 1920, when the ship was lost.

In resorting to the State statute to supply the analogy the court fell into error. Not only the Suits in Admiralty Act but a number of other Federal statutes have prescribed a two-year period of limitation governing causes under maritime jurisdiction. General Salvage Act, c. 268, 37 Stat. 242, U. S. C., Title 46, Secs. 727–731; Section 33, Merchant Marine Act, 1920, c. 250, 41 Stat. 1007; Death on the High Seas Act, c. 111, 41 Stat. 537, U. S. C., Title 46, Secs. 761–768; Public Vessel Act, c. 428, 43 Stat. 1112, U. S. C., Title 46, Secs. 781–790; Cummins Amendment, c. 91, 41 Stat. 456, 494.

These Federal statutes, dealing with related matters, should have been looked to, rather than varying local statutes, to furnish the analogy. "A statute may indicate a change in the policy of the law, although it expresses that change only in the specific cases most likely to occur to the mind." *Gooch* v. *Oregon Short Line R. R. Co.*, 258 U. S. 22, 24; *South & Central America Commercial Co.* v. *Panama R. R. Co.*, 237 N. Y. 287.

It is highly desirable, because of the very nature of admiralty and maritime jurisdiction, that there should be uniformity, and this Court has recognized that the desirability of securing this was one of the reasons which prompted the writing into

the Constitution of the applicable provision. *Washington* v. *Dawson & Co.*, 264 U. S. 219, 228; *Panama R. R. Co.* v. *Johnson*, 264 U. S. 375, 386, 387, and cases therein cited.

Engel v. *Davenport*, 271 U. S. 33, 39, declares:

> The period of time within which an action may be commenced is a material element in such uniformity of operation. And, plainly, Congress in incorporating the provisions of the Employer's Liability Act into the Merchant Marine Act did not intend to exclude a provision so material, and to permit the uniform operation of the Merchant Marine Act to be destroyed by the varying provisions of the state statutes of limitation.

Section 14 of the Shipping Act prohibits unreasonable discrimination in the settlement or adjustment of claims of shippers. This provision is analogous to the antidiscrimination provisions of Section 16 of the Interstate Commerce Act, as amended (c. 3591, Sec. 5, 34 Stat. 584, 590; U. S. C., Title 49, Sec. 16).

In *Phillips* v. *Grand Trunk Ry.*, 236 U. S. 662, this Court held that under that section failure by carrier to plead limitations in one case and not in another or the waiving of limitations was discrimination and beyond the power of the carrier.

Congress could not legislate State statutes of limitation into the maritime law.

Knickerbocker Ice Co. v. *Stewart*, 253 U. S. 149.

The Lottawanna, 21 Wall. 558, 575.

No more can the same result be brought about by a court so long as these Federal statutes on kindred subjects furnish a closer and uniform analogy. These statutes, rather than diverse State statutes, furnish—

> "a convenient measure of the length of time that ought to operate as a bar in equity of any particular demand." (*Bowman* v. *Walthen,* 1 How. 189, 194.)

III

THE "WEST ALETA" DID NOT DEVIATE IN SAILING DIRECTLY FOR HAMBURG AS HER FIRST PORT OF CALL

The court below held that by directing her course toward Hamburg—the most distant of the three obligatory ports of call—the *West Aleta* deviated as respects the Cardiff and Rotterdam cargoes, and thereby lost the benefit of the Harter Act, c. 105, 27 Stat. 445, 446, and of the provisions of the bills of lading, which otherwise would relieve her of liability because of the error in navigation.

In *Hostetter* v. *Park,* 137 U. S. 30, this Court said (p. 40):

> A deviation is defined to be "a voluntary departure, without necessity or reasonable cause, from the regular and usual course" of a voyage * * *.

Constable v. *National Steamship Co.,* 154 U. S. 51, 66; *S. S. Willdomino* v. *Citro Chem. Co.,* 272

U. S. 718, 727; *Wallem Rederi* v. *Muller & Co.*, 27 Ll. L. Rep. 277.

What voyage did the *West Aleta* contract to perform? If we should look only to the bills of lading, we might infer that there were at least three distinct and unrelated voyages—one to Hamburg, one to Rotterdam, and one to Cardiff—for each bill mentions only the destination of the particular goods which it covers. Thus the Hamburg bill would lead us to believe that the voyage was to Hamburg alone.

Clearly, the voyage of a ship is not to be determined by reference to a single bill of lading.

To what, then, may we look? The vessel was offered to the public for the carriage of freight to "Hamburg, Rotterdam, and Cardiff." Commercial publications containing this announcement were subscribed for by all of the respondents. True, no provision of the written instrument may be varied by reference to the original offer, but the contract does not, and does not profess to, indicate either the *scope* or the *route* of the voyage.

The liberties clause in all the bills of lading was as follows:

> to touch at any port or ports, in any rotation or order in, or out of, the customary route and to call at any port or ports more than once.

The liberties clause should be construed in reference to the service which the *West Aleta* had undertaken to render. She was advertised for the

transportation of goods to Hamburg, Rotterdam, and Cardiff (R. 80, 106) in the leading commercial papers of San Francisco, to which the respondents were subscribers (R. 214). All these respondents had cargo on this vessel for both Hamburg and Rotterdam. The shippers knew the kind of service in which she was engaged; that is, that she was carrying general nonperishable cargo from a number of ports on the Pacific Coast to at least three ports of discharge. Prudent business management requires a vessel to make her ports of call in the most economical manner in reference to her service as a whole. Return cargoes are essential to such economical operation, and the sailing orders directed the vessel to go to Hamburg first, showing the plans for the voyage which were accessible to respondents. The liberties clause should be construed to give greater freedom of choice of route in such a service—that is, from a range of ports to another range of ports—than in a service from one port of loading to one port of discharge. It then becomes a question of the reasonableness of the route selected.

The more weighty and bulky cargo was destined to Cardiff and was prudently stowed (see stipulation, R. 80) in the lower holds, with the Rotterdam and Hamburg consignments chiefly on top. The latter must necessarily have been shifted in order to unlade the first at Cardiff. This, of course, could but make for delay and, by the extra handling, increase the risk of damage. Congested con-

ditions then peculiar to British ports frequently brought about material delays, and shipowners were obligated by wise management to make the inbound or delivery call and the outbound or loading call at the same time. (R. 204.)

Prudent management of the vessel, as well as the best interests of the shippers, considering all the contracts and the scope of the voyage, would suggest that under such conditions Cardiff should properly be the last port of call.

Looking at the thing from a practical viewpoint and considering the length and scope of the voyage, it seems rather immaterial that the first-visited port should happen to be more distant than another, where both ports were within the planned itinerary of the vessel, and not unreasonably far apart.

There is nothing in this case to suggest that this vessel was wandering about the sea heading first for one port and then, without adequate reason, for another, as in *S. S. Willdomino* v. *Citro Chem. Co.*, 272 U. S. 718, 727.

Both the District Court and the Circuit Court of Appeals held that these liberties were confined to ports *between the termini* of the voyage as determined by the port of shipment and the ports of destination. Judge Kerrigan admitted that he did not give the words "in any rotation or order in or out of the customary route" their natural meaning, saying (R. 677):

> This, counsel argue, absolutely disregards the phrase "out of the customary route,"

> because without the use of these words a ship might touch at any such port, and such a construction deprives them of all meaning. That the words quoted may be redundant to the power which they purport to enlarge, without in fact enlarging it, must of course be granted.

The Circuit Court of Appeals adopted the termini theory without qualification. Their language was (R. 848, 849):

> An interpretation of the contract solely by legal import and construction of the words used is that the voyage was to Cardiff, with the privilege of going to other ports in or out of order *between the termini,* in prosecuting the real objects of the adventure intended by the parties. * * * Bringing the principle to the immediate case, the ports to which the *West Aleta* could go were those which, in a business sense, would be passed in the usual course of the voyage from San Francisco to Cardiff. (Italics ours.)

The reasoning with reference to Cardiff cargo was held to apply with equal force to Rotterdam cargo without regard to the difference in distances.

Both courts cite with approval and follow *Smith* v. *Fleet Corporation,* 2 F. (2d) 390 (now pending before the Second Circuit Court of Appeals), where Judge A. N. Hand held that the *West Aleta* on this same voyage deviated as to Rotterdam cargo, basing his decision on the termini theory and the

absence from the liberties clause of the words "or beyond."

In the *Eastern Prince,* 1927 A. M. C. 985, Judge Kerrigan had before him a case where a vessel loaded cargo at Hull, England, for San Francisco and then proceeded to Leith, Scotland, to discharge cargo loaded at San Francisco. This was held a deviation in spite of the broad liberties clause which read (p. 986):

> Either before or after proceeding towards the port of discharge to proceed to and/or stay at any ports or place whatsoever, although in a contrary direction to, or out of *or beyond* the customary route to the said port of discharge, once or oftener, in any order, backwards or forwards, for any purpose whatsoever. (Italics ours.)

In *The Frederick Luckenbach,* 15 F. (2d) 241, at p. 243, Judge Thacher said:

> The rule is one of interpretation, by which the meaning of words having a general significance is confined within the particular purpose of the agreement. But in ascertaining the true sense in which general words are used, the words themselves can not be deprived of all meaning, for this would not be to interpret the agreement *but to erase a part of it.* (Italics ours.)

In *The Blandon,* 287 Fed. 722, Judge Learned Hand said, at p. 725:

> But it must mean to give the ship permission to steam by a different route from that she was otherwise bound to take, besides giving her leave to make ports of call en route; i. e., "in * * * the customary route." Such permission involves delay, and was meant to involve delay. There was no nearer port of lading possible for her than Philadelphia, and the clause was not limited to ports of discharge. When contained in a bill of lading for a mixed cargo, it must be read as intended to give the ship some latitude in making up that cargo.

They both recognized the shipowner's freedom of contract and held that the language used should be given its natural meaning and not a strained construction. Liberties clauses are intended to give vessels latitude in making up their cargo (*The Blandon*, 287 Fed. 722, 726; *The Panola*, 9 F. (2d) 733), and apply to loading and discharging ports and to overlapping voyages.

The *West Aleta* clause purports to give her three liberties:

(1) to touch at any port or ports in or out of the customary route.

(2) to touch at any port or ports in any rotation or order.

(3) to call at any port or ports more than once.

These liberties were intended to allow the vessel to depart from the customary route and to call at

ports in the reverse of their geographical order. She could not call at a port more than once without doubling back. To touch at any port or ports in any rotation or order contemplates reversing the geographical order. They were intended to allow overlapping voyages such as Judge Kerrigan condemned in the *Eastern Prince, supra.* The lower courts admitted that the clause gave the *West Aleta* broad liberties but held that these were confined to ports between the termini of the voyage as determined by the ports of shipment and the ports of destination. On this theory the *West Aleta* could have proceeded to Rotterdam, Cardiff, and Hamburg, in that order, without deviating as to Hamburg cargo, but she would have deviated as to Cardiff cargo. If, instead of having cargo for those ports, the *West Aleta* had cargo for Havre, Antwerp, Rotterdam, Hamburg, and Bremen, she would have had to make all of those ports in geographical order or she would have deviated as to some cargo. It would have been a deviation as to Havre cargo to make Antwerp her first port of call, though it would not have been a deviation as to Rotterdam, Hamburg, and Bremen cargo.

The liberties clause should be construed so as to carry out the general purposes of the contract. Judge Thacher said in this connection in *The Frederick Luckenbach*, 15 F. (2d) 241, at p. 243:

> The rule is one of interpretation, by which the meaning of words having a general sig-

> nificance is confined within the particular purpose of the agreement. But in ascertaining the true sense in which general words are used, the words themselves can not be deprived of all meaning, *for this would not be to interpret the agreement but to erase a part of it.* (Italics ours.)

An interpretation of the liberties clause should be adopted which will give to the words used their natural meaning, so far as this is consistent with the general purposes of the contract. Such interpretation, it is submitted, would permit the vessel to make reasonable departures from the customary route and to call at her ports of discharge in any rotation or order and in the reverse of their geographical order. The voyage in question was a long one and the cargo general and nonperishable. The departure from the shortest geographical route was under the circumstances reasonable and the vessel did not deviate.

The interpretation adopted by the lower courts makes overlapping voyages impossible and increases the cost of steamship operation. If a vessel has cargo for Rotterdam and Hamburg and has a full return cargo at Rotterdam, she would have to call at Rotterdam a second time for her return cargo. There are services where vessels both load and discharge at a number of ports. They may have full cargoes and wish to load more than they discharge at one port or a number of ports; unless the vessel can call at these ports in the reverse of

the geographical order it will be necessary to call at some of them more than once, with the resulting additional expense and loss of time. In some trades, such as those to the West and East coasts of Africa, this may mean depriving some ports of any service at all.

In *The Sidonian,* 34 Fed. 805, the vessel sailed from Genoa for New York (with a cargo of lemons) via Palermo, a port both east and south of Genoa and not between the termini. The bill of lading gave her "liberty to call at any port or ports, in any rotation, for any purpose whatsoever." Judge Benedict held that there was no deviation.

In *London-Savannah Naval Stores Co.* v. *South Atlantic S. S. Line,* 248 Fed. 949, the question was whether a voyage from Pensacola, Florida, to Bristol, England, via a continental port (Antwerp), was a deviation under a bill of lading giving the vessel liberty—

> to call at any port or ports in or out of the customary route, in any order, to receive or discharge coal, cargo, passengers, or for any other purpose.

The District Court held that there was a deviation, using reasoning similar to that of the lower courts in these cases (p. 952):

> According to my construction of the contract, the liberty of call clause did not permit an absolute deviation to all or any particular continental ports. The only ports at which

the vessel was at liberty to call were such as were fairly on the course of the agreed voyage from Pensacola to Bristol.

In reversing the District Court the Circuit Court of Appeals for the Fifth Circuit (255 Fed. 306) said, pp. 310, 311:

> As shown by the terms of the bill of lading stipulated for, the vessel carrying the libelant's rosin and turpentine was to have "liberty to call at any port or ports, in or out of the customary route, in any order whatsoever, to receive or discharge coals, cargo, passengers, or for any other purpose."
>
> There is no law standing in the way of a shipper under a maritime contract binding himself by an agreement that the vessel carrying his goods, constituting only a part of its cargo, is to have the privilege expressed by the provision just quoted. No right of a shipper under such a contract is violated by the vessel carrying his goods going to the port to which they are destined by way of another port, in or out of the customary route, for the delivery of other goods shipped to such other port. * * *
>
> * * * All that libelant was entitled to was performance of the contracts. *Its rejection of the tender because of the respondent's noncompliance with an unwarranted demand that it forego the right which the contracts reserved to it of going to Bristol by way of a continental port justified the respondent in treating the contracts as canceled.* (Italics ours.)

The distance from Antwerp or Rotterdam to Bristol is about the same as that to Cardiff and is much greater than the distance from Rotterdam to Hamburg. In going to Antwerp or Rotterdam the vessel would have to go beyond the termini of a voyage from Pensacola to Bristol.

In *The Blandon,* 287 Fed. 722, on a voyage from New York to Valencia the vessel proceeded to Philadelphia, a port both west and south of New York and beyond the termini, under a bill of lading providing:

> with the liberty to call at any port or ports in or out of the customary route in any order.

Judge Learned Hand held that this was no deviation, saying, at p. 725:

> If these words are to mean anything at all, it seems to me that they must include such a stop as Philadelphia. True, it was not a stop on the customary route; at least, I must assume so on this record. Yet it was expressly agreed that the port might be "out of the customary route." What more limited sense can those words mean than a stop at a place some thirty hours away? It is said that the clause will allow only reasonable deviations, and this is indeed true, since such a clause is to be construed in its context. *Swift & Co.* v. *Furness, etc.* (*D. C.*) 87 Fed. 345. For example, it might not allow a side voyage to Tampico or Galveston; certainly it would not permit a call at Rio or

> Montevideo. But it must mean to give the ship permission to steam by a different route from that she was otherwise bound to take, besides giving her leave to make ports of call en route; i. e., "in * * * the customary route." Such permission involves delay, and was meant to involve delay. There was no nearer port of lading possible for her than Philadelphia, and the clause was not limited to ports of discharge. When contained in a bill of lading for a mixed cargo, it must be read as intended to give the ship some latitude in making up that cargo.

The distance from New York to Philadelphia is 235 miles, and from Philadelphia to Gibraltar is 143 miles farther than from New York. (Table of Distances, Hydrographic Office of the Navy.) The course followed was about 378 miles longer than the shortest geographical route, slightly less than the extra mileage of the *West Aleta* in making Hamburg her first and Rotterdam her second port of discharge.

In *The Frederick Luckenbach,* 15 F (2d) 241, cargo was shipped from Portland, Oregon, to New Orleans and Mobile. The vessel proceeded via Seattle and Tacoma. Judge Thacher, in holding there was no deviation, said, at page 244:

> But here the vessel is authorized "to proceed toward or to, and enter and stay at, or return to, any ports or places whatsoever, although not regular or scheduled or adver-

> tised ports of call, or in a contrary direction to or outside the usual or scheduled route, * * * for the purpose of bunkering or of securing, loading, and/or discharging cargo. * * * All of the matters and operations mentioned in this paragraph are agreed to be within the intended voyage, and not a deviation."
>
> * * * the ship was authorized by the terms of the bill of lading in question to proceed as she did to Seattle and Tacoma for the purpose of securing cargo before proceeding toward the port of discharge.

Seattle and Tacoma are ports beyond the termini of a voyage from Portland to New Orleans. Portland is 380 miles from Tacoma and 94 miles from the entrance to the Columbia River. The departure from the shortest geographical route was almost 600 miles.

In the *Tokuyo Maru* (*W. R. Grace & Co.* v. *Toyo Kisen Kabushiki Kaisha*), 12 F. (2d) 519, the bill of lading gave the vessel liberty—

> to touch at any port or ports in any rotation or order in or out of the customary route. 7 F. (2d) 891.

The voyage was from Iquique and Antofagasta, Chile, to Honolulu. It was admitted that the usual route was via San Francisco. It was held no deviation to proceed to Portland while en route.

No attempt will be made to review all of the English and American deviation cases. Some involve bills of lading with no liberties clause, and others clauses narrower than that of the *West Aleta*. The cases principally relied upon by the lower courts are *Seccomb* v. *Provincial Insurance Co.*, *LeDuc & Co.* v. *Ward*, *Glynn* v. *Margetson*, *Morrison* v. *Shaw*, and *U. S. Shipping Board* v. *Bunge & Born*.

Seccomb v. *Insurance Co.*, 10 Allen, 305, involved a suit on a hull insurance policy. Vessel was insured for a voyage from New York to South American ports, with an indorsement:

> Liberty is given to deviate by going to port or ports in Europe, by paying an equitable premium therefor.

After discharging at South American ports the vessel proceeded to Constantinople and from there made an intermediate voyage from Constantinople to Crimea before loading return cargo for the United States. On the way back she was lost off the American coast. The court held that the intermediate voyage was a deviation. This situation is far different from that here involved.

LeDuc & Co. v. *Ward*, 6 Asp. Mar. L. C. 290, involved a different liberties clause from that in this case. Judge Learned Hand, commenting thereon, in *The Blandon, supra*, declared (p. 725) as follows, page 725:

> The clause read, "to call at any ports in any order," and Lord Esher thought that this meant any ports in the route prescribed. As the voyage was Fiume to Dunkirk, and the ship was lost in the Clyde, it was scarcely possible to excuse her without holding that the clause gave the ship the right to disregard the whole venture. *It is to be noted that the clause did not give her the liberty to call out of the customary route.* (Italics ours.)

Glynn v. *Margetson & Co.*, A. C. (1893) 351, involved a perishable cargo (oranges) and the voyage was so delayed that the cargo perished. Judge Learned Hand commented on it in *The Blandon* as follows, page 726:

> The next case was *Glynn* v. *Margetson*, (1893) A. C. 351, where the voyage was Malaga to an English port. The bill of lading contained a liberty to call in any order at specified Mediterranean ports, this being printed. It was held that in the case of a voyage from a port like Malaga the general clause did not allow of doubling back and forth in the Mediterranean, but was intended to cover only such ports as were in "a business sense" en route. *That clause, too, had no express liberty to call out of the customary route.* (Italics ours.)

In *Morrison & Co.* v. *Shaw, Savill, & Albion Co.*, (1916) 2 K. B. 783, the bill of lading contained two liberties, one in reference to calling at ports of New Zealand and the other in reference to calls made on the voyage from New Zealand to London. The second was a very narrow clause, limiting the vessel's right to call to intermediate ports. The decision was based on the proposition that Havre was not such an intermediate port. Judge Learned Hand commented on this case in *The Blandon,* as follows, at page 726:

> In *Morrison* v. *Shaw* (1916) 2 K. B. 783, the bill of lading had two liberties, one in or out of the customary route to pick up cargo in New Zealand, (which Swinfen Eady, L. J., said arguendo gave her the right to stop where she chose for that purpose in New Zealand), the other "to call and stay at any intermediate port" en route to London. The ship, instead of making direct for London, stood in for Havre and was torpedoed. This was held a deviation, though the judges conceded that it was a close case, and depended upon the degree of the departure. *There can be little or no doubt that, if the liberty beyond New Zealand had been as broad as that within, the result would have been different.* In any event, *it rests upon the finding that Havre is not "an intermediate port" between New Zealand and London.* (Italics ours.)

United States Shipping Board v. *Bunge & Born,* 23 Ll. L. Rep. 257, involved a bill of lading with a

liberties clause which did not grant liberty to call out of the customary route.

The most recent case in this Court wherein consideration was given to the matter of deviation is *S. S. Willdomino* v. *Citro Chem. Co.*, 272 U. S. 718. The bill of lading contained a liberty clause on a voyage from Messina to New York "with liberty to call at intermediate ports or any port or ports in or out of the customary route in any order, to receive and discharge coal, cargo, passengers, and for any other purposes." She called at Lisbon and cleared for New York, with insufficient coal to get her there. Because of turbine trouble she stopped at the Azores, but notwithstanding that one of two turbines was disabled, with insufficient coal, cleared again for New York. After proceeding five or six days toward New York it became manifest that there was not enough coal to make that port, and thereupon she radically changed her course and proceeded to North Sydney, where she arrived with sixty-two tons.

> Whether the intention was to proceed directly from Ponta Delgada to New York, as Counsel for the petitioner are said to have maintained below, or to North Sydney, as they now insist, there was inexcusable departure.
>
> * * * * * * * * If the *Willdomino* had the privilege of going from Ponta Delgada to North Sydney and intended so to do, it was her duty

to take the ordinary course. This she did not do. (272 U. S. 727.)

CONCLUSION

It is respectfully submitted that the decree of the Circuit Court of Appeals should be reversed and the cause remanded to the District Court with directions to dismiss the libels.

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APPENDIX I

SHIPPING ACT, 1916, SEPTEMBER 7, 1916, C. 451, 39 STAT. 728, AS AMENDED BY THE MERCHANT MARINE ACT OF 1920, C. 250, 41 STAT. 988 (U. S. C., TITLE 46, SECS. 804, 810, 811)

SEC. 3. That a board is hereby created to be known as the United States Shipping Board and hereinafter referred to as the board. The board shall be composed of seven commissioners, to be appointed by the President, by and with the advice and consent of the Senate; and the President shall designate the member to act as chairman of the board, and the board may elect one of its members as vice chairman. Such commissioners shall be appointed as soon as practicable after the enactment of this Act and shall continue in office two for a term of one year, and the remaining five for terms of two, three, four, five, and six years, respectively, from the date of their appointment, the term of each to be designated by the President, but their successors shall be appointed for terms of six years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he succeeds.

The commissioners shall be appointed with due regard to their fitness for the efficient discharge of the duties imposed on them by this Act, and two shall be appointed from the States touching the Pacific Ocean, two from the States touching the Atlantic Ocean, one from the States touching the Gulf of Mexico, one from the States touching the Great Lakes and one from the interior, but not more than one shall be appointed from the same State. Not more than four of the commissioners

shall be appointed from the same political party. A vacancy in the board shall be filled in the same manner as the original appointments. No commissioner shall take any part in the consideration or decision of any claim or particular controversy in which he has a pecuniary interest.

Each commissioner shall devote his time to the duties of his office, and shall not be in the employ of or hold any official relation to any common carrier or other person subject to this Act, nor while holding such office acquire any stock or bonds thereof or become pecuniarily interested in any such carrier.

The duties of the board may be so divided that under its supervision the directorship of various activities may be assigned to one or more commissioners. Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy in the board shall not impair the right of the remaining members of the board to exercise all its powers. The board shall have an official seal, which shall be judicially noticed.

The board may adopt rules and regulations in regard to its procedure and the conduct of its business. The board may employ within the limits of appropriations made therefor by Congress such attorneys as it finds necessary for proper legal service to the board in the conduct of its work, or for proper representation of the public interest in investigations made by it or proceedings pending before it whether at the board's own instance or upon complaint, or to appear for or represent the board in any case in court or other tribunal. The board shall have such other rights and perform such

other duties not inconsistent with the Merchant Marine Act, 1920, as are conferred by existing law upon the board in existence at the time this section as amended takes effect.

The commissioners in office at the time this section as amended takes effect shall hold office until all the commissioners provided for in this section as amended are appointed and qualify.

* * * * *

SEC. 5. That the board, with the approval of the President, is authorized to have constructed and equipped in American shipyards and navy yards or elsewhere, giving preference, other things being equal, to domestic yards, or to purchase, lease, or charter, vessels suitable, as far as the commercial requirements of the marine trade of the United States may permit, for use as naval auxiliaries or Army transports, or for other naval or military purposes, and to make necessary repairs on and alterations of such vessels: *Provided,* That neither the board nor any corporation formed under section eleven in which the United States is then a stockholder shall purchase, lease, or charter any vessel—

(*a*) Which is then engaged in the foreign or domestic commerce of the United States, unless it is about to be withdrawn from such commerce without any intention on the part of the owner to return it thereto within a reasonable time;

(*b*) Which is under the registry or flag of a foreign country which is then engaged in war;

(*c*) Which is not adapted, or can not by reasonable alterations and repairs be adapted, to the purposes specified in this section;

(*d*) Which, upon expert examination made under the direction of the board, a written report

of such examination being filed as a public record, is not without alteration or repair found to be at least seventy-five per centum as efficient as at the time it was originally put in commission as a seaworthy vessel.

* * * * *

SEC. 11. That the board, if in its judgment such action is necessary to carry out the purposes of this Act, may form under the laws of the District of Columbia one or more corporations for the purchase, construction, equipment, lease, charter, maintenance, and operation of merchant vessels in the commerce of the United States.[e] The total capital stock thereof shall not exceed $50,000,000. The board may, for and on behalf of the United States, subscribe to, purchase, and vote not less than a majority of the capital stock of any such corporation, and do all other things in regard thereto necessary to protect the interests of the United States and to carry out the purposes of this Act. The board, with the approval of the President, may sell any or all of the stock of the United States in such corporation, but at no time shall it be a minority stockholder therein: *Provided,* That no corporation in which the United States is a stockholder, formed under the authority of this section, shall engage in the operation of any vessel constructed, purchased, leased, chartered, or transferred under the authority of this Act unless the board shall be unable, after a bona fide effort, to contract with any person a citizen of the United States for the purchase, lease, or charter of such vessel under such terms and conditions as may be prescribed by the board.

The board shall give public notice of the fact that vessels are offered and the terms and conditions upon which a contract will be made, and shall invite competitive offerings. In the event the board shall, after full compliance with the terms of this proviso, determine that it is unable to enter into a contract with such private parties for the purchase, lease, or charter of such vessel, it shall make a full report to the President, who shall examine such report, and if he shall approve the same he shall make an order declaring that the conditions have been found to exist which justify the operation of such vessel by a corporation formed under the provisions of this section.

At the expiration of five years from the conclusion of the present European war the operation of vessels on the part of any such corporation in which the United States is then a stockholder shall cease and the said corporation stand dissolved.[7] The date of the conclusion of the war shall be declared by proclamation of the President. The vessels and other property of any such corporation shall revert to the board. The board may sell, lease, or charter such vessels as provided in section seven and shall dispose of the property other than vessels on the best available terms and, after payment of all debts and obligations, deposit the proceeds thereof in the Treasury to its credit. All stock in such corporations owned by others than the United States at the time of dissolution shall be taken over by the board at a fair and reasonable value and paid for with funds to the credit of the board. In case of disagreement, such value shall be determined in the manner provided in section ten.

SEC. 12. * * *

It shall, on or before the first day of December in each year, make a report to the Congress, which shall include its recommendations and the results of its investigations, a summary of its transactions, and a statement of all expenditures and receipts under this act, and of the operations of any corporation in which the United States is a stockholder, and the names and compensation of all persons employed by the board.

APPENDIX II

ACT OF JUNE 15, 1917, EMERGENCY SHIPPING FUND, C. 29, 40 STAT. 182

1. The President is hereby authorized and empowered, within the limits of the amounts herein authorized—

(*a*) To place an order with any person for such ships or material as the necessities of the Government, to be determined by the President, may require during the period of the war and which are of the nature, kind, and quantity usually produced or capable of being produced by such person.

* * * * *

(*e*) To purchase, requisition, or take over the title to, or the possession of, for use or operation by the United States any ship now constructed or in the process of construction or hereafter constructed, or any part thereof, or charter of such ship.

* * * * *

The President may exercise the power and authority hereby vested in him, and expend the money herein and hereafter appropriated through such agency or agencies as he shall determine from time

to time: *Provided,* That all money turned over to the United States Shipping Board Emergency Fleet Corporation may be expended as other moneys of said corporation are now expended. All ships constructed, purchased, or requisitioned under authority herein, or heretofore or hereafter acquired by the United States, shall be managed, operated, and disposed of as the President may direct.

* * * * *

All authority granted to the President herein, or by him delegated, shall cease six months after a final treaty of peace is proclaimed between this Government and the German Empire.

* * * * *

For the operation of the ships herein authorized or in any way acquired by the United States, except those acquired for the Army or Navy, and for every expenditure incident thereto, $5,000,000.

APPENDIX III

Executive Order No. 2664, July 11, 1917

Delegating to the Shipping Board and the Emergency Fleet Corporation the powers granted the President by the emergency shipping legislation.

By virtue of authority vested in me in the section entitled "Emergency shipping fund" of an act of Congress entitled "An act making appropriations to supply urgent deficiencies in appropriations for the Military and Naval Establishments on account of war expenses for the fiscal year ending June

thirtieth, nineteen hundred and seventeen, and for other purposes," approved June 15, 1917, I hereby direct that the United States Shipping Board Emergency Fleet Corporation shall have and exercise all power and authority vested in me in said section of said act, in so far as applicable to and in furtherance of the construction of vessels, the purchase or requisitioning of vessels in process of construction, whether on the ways or already launched, or of contracts for the construction of such vessels, and the completion thereof, and all power and authority applicable to and in furtherance of the production, purchase, and requisitioning of materials for ship construction.

And I do further direct that the United States Shipping Board shall have and exercise all power and authority vested in me in said section of said act, in so far as applicable to and in furtherance of the taking over of title or possession, by purchase or requisition, of constructed vessels, or parts thereof, or charters therein; and the operation, management and disposition of such vessels, and of all other vessels heretofore or hereafter acquired by the United States. The powers herein delegated to the United States Shipping Board may, in the discretion of said board, be exercised directly by the said board or by it through the United States Shipping Board Emergency Fleet Corporation, or through any other corporation organized by it for such purpose.

WOODROW WILSON.

THE WHITE HOUSE,
11 July, 1917.

APPENDIX IV

ACT OF JULY 18, 1918, C. 157, SEC. 15, 40 STAT. 913

SEC. 15. That all vessels of which the possession or services are requisitioned under this Act, and all dry docks, wharves, loading or discharging terminal facilities, warehouses, equipment, or terminal railways, of which the President may acquire the title or possession or of which he may assume control under this Act, may be operated and managed as the President may from time to time direct. The net proceeds derived from any activity authorized in this Act or the joint resolution of May twelfth, nineteen hundred and seventeen (Public Numbered Two), or the division entitled "Emergency shipping fund" of the Act of June fifteenth, nineteen hundred and seventeen (Public Numbered Twenty-three), shall be deposited in the Treasury in a separate and distinct fund and may be expended by the President in carrying out the purposes of this Act, and within the limits of the amounts heretofore or hereafter authorized, for the construction, requisitioning, or purchasing of vessels: *Provided,* That none of the provisions of this Act shall apply to vessels plying exclusively on the inland rivers and canals of the United States.

APPENDIX V

EXECUTIVE ORDER DECEMBER 3, 1918

Delegating to the United States Shipping Board certain powers relating to ocean freight rates and terminal charges.

Whereas sections 6 and 12 of an Act of Congress approved July 18, 1918, entitled "An act to confer on the President power to prescribe charter rates and freight rates and to requisition vessels, and for other purposes," provide as follows:

"SEC. 6. That the President shall have power to determine, prescribe, and enforce reasonable freight rates and the terms and conditions of affreightment which shall govern the transportation of goods on vessels of the United States, which shall be filed with the United States Shipping Board and open to public inspection. It shall be unlawful to charge or collect any compensation for the transportation of goods on any such vessel, or to enforce or attempt to enforce any terms or conditions of affreightment, or to make or receive any payment or do any act with respect to such transportation, not in accordance with the rates, terms, and conditions so prescribed, anything in any contract, whether heretofore or hereafter made, to the contrary notwithstanding."

"SEC. 12. That the President shall have power to prescribe the order of priority in which persons in possession of dry docks, wharves, lighterage systems, or loading or discharging terminal facilities in any port of the United States, or warehouses, equipment or terminal railways connected therewith, shall serve vessels and shippers, and to determine, prescribe, and enforce the rates, terms, and conditions charged or required for the furnishing of such services, including stevedoring and handling of cargo, and the handling, dispatching, and bunkering of vessels, and to make such rules

and regulations with respect to the conduct of any such business as may be necessary and proper. It shall be unlawful to charge, collect, or claim any compensation, or to enforce or attempt to enforce any terms or conditions, or to make or receive any payment or do any act with respect to any such service not in accordance with the rates, terms, and conditions so prescribed, anything in any contract, whether heretofore or hereafter made, to the contrary notwithstanding."

And whereas in section 2 of said Act it is provided—

"That the President may exercise the power and authority hereby vested in him through such agency or agencies as he shall determine from time to time."

Now, therefore, it is ordered as follows:

1. All power conferred on the President in section 6 of said act to determine, prescribe, and enforce reasonable freight rates and the terms and conditions of affreightment which shall govern the transportation of goods on private merchant vessels of the United States, shall be exercised through the United States Shipping Board.

2. All power conferred on the President in section 12 of said Act to determine, prescribe, and enforce the rates, terms, and conditions charged or required for services furnished by persons in possession of dry docks, wharves, lighterage systems, or loading or discharging terminal facilities, or warehouses, equipment, or terminal railways connected therewith, and for stevedoring or handling cargo, and the handling, dispatching, or bunkering of vessels, and all power conferred on the Presi-

dent to make rules and regulations with respect to the conduct of any such business, shall be exercised by the United States Shipping Board; but the power delegated in this paragraph shall not extend to any dry docks, wharves, lighterage systems, or loading or discharging terminal facilities, or warehouses, equipment or terminal railways, which are now or may hereafter be placed under the jurisdiction and control of the Secretary of War or the Secretary of the Navy or the Director General of Railroads.

3. Nothing contained in this Executive order shall be deemed to withdraw any power or authority heretofore granted to or now exercised by the Secretary of War, the Secretary of the Navy, the War Trade Board, the Interstate Commerce Commission, or the Director General of Railroads.

WOODROW WILSON.

THE WHITE HOUSE,
3 December, 1918.

APPENDIX VI

SUITS IN ADMIRALTY ACT, MARCH 9, 1920, C. 95, 41 STAT. 525 (U. S. C., TITLE 46, SECS. 741–752)

An Act Authorizing suits against the United States in admiralty, suits for salvage services, and providing for the release of merchant vessels belonging to the United States from arrest and attachment in foreign jurisdictions, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no vessel owned by the United States or by any corporation in which the United

States or its representatives shall own the entire outstanding capital stock or in the possession of the United States or of such corporation or operated by or for the United States or such corporation, and no cargo owned or possessed by the United States or by such corporation, shall hereafter, in view of the provision herein made for a libel in personam, be subject to arrest or seizure by judicial process in the United States or its possessions: *Provided,* That this Act shall not apply to the Panama Railroad Company.

SEC. 2. That in cases where if such vessel were privately owned or operated, or if such cargo were privately owned and possessed, a proceeding in admiralty could be maintained at the time of the commencement of the action herein provided for, a libel in personam may be brought against the United States or against such corporation, as the case may be, provided that such vessel is employed as a merchant vessel or is a tug boat operated by such corporation. Such suits shall be brought in the district court of the United States for the district in which the parties so suing, or any of them, reside or have their principal place of business in the United States, or in which the vessel or cargo charged with liability is found. The libelant shall forthwith serve a copy of his libel on the United States attorney for such district and mail a copy thereof by registered mail to the Attorney General of the United States, and shall file a sworn return of such service and mailing. Such service and mailing shall constitute valid service on the United States and such corporation. In case the United States or such corporation shall file a libel in rem or in personam in any district, a cross-libel in per-

sonam may be filed or a set-off claimed against the United States or such corporation with the same force and effect as if the libel had been filed by a private party. Upon application of either party the cause may, in the discretion of the court, be transferred to any other district court of the United States.

SEC. 3. That such suits shall proceed and shall be heard and determined according to the principles of law and to the rules of practice obtaining in like cases between private parties. A decree against the United States or such corporation may include costs of suit, and when the decree is for a money judgment, interest at the rate of 4 per centum per annum until satisfied, or at any higher rate which shall be stipulated in any contract upon which such decree shall be based. Interest shall run as ordered by the court. Decrees shall be subject to appeal and revision as now provided in other cases of admiralty and maritime jurisdiction. If the libelant so elects in his libel the suit may proceed in accordance with the principles of libels in rem wherever it shall appear that had the vessel or cargo been privately owned and possessed a libel in rem might have been maintained. Election so to proceed shall not preclude the libelant in any proper case from seeking relief in personam in the same suit. Neither the United States nor such corporation shall be required to give any bond or admiralty stipulation on any proceeding brought hereunder. Any such bond or stipulation heretofore given in admiralty causes by the United States, the United States Shipping Board, or the United States Shipping Board Emergency Fleet Corporation, shall become void and be surrendered and canceled upon the filing of a sug-

gestion by the Attorney General or other duly authorized law officer that the United States is interested in such cause, and assumes liability to satisfy any decree included within said bond or stipulation, and thereafter any such decree shall be paid as provided in section 8 of this Act.

SEC. 4. That if a privately owned vessel not in the possession of the United States or of such corporation is arrested or attached upon any cause of action arising or alleged to have arisen from previous possession, ownership, or operation of such vessel by the United States or by such corporation, such vessel shall be released without bond or stipulation therefor upon the suggestion by the United States, through its Attorney General or other duly authorized law officer, that it is interested in such cause, desires such release, and assumes the liability for the satisfaction of any decree obtained by the libelant in such cause, and thereafter such cause shall proceed against the United States in accordance with the provisions of this Act.

SEC. 5. That suits as herein authorized may be brought only on causes of action arising since April 6, 1917, provided that suits based on causes of action arising prior to the taking effect of this Act shall be brought within one year after this Act goes into effect; and all other suits hereunder shall be brought within two years after the cause of action arises.

SEC. 6. That the United States or such corporation shall be entitled to the benefits of all exemptions and of all limitations of liability accorded by law to the owners, charterers, operators, or agents of vessels.

SEC. 7. That if any vessel or cargo within the purview of sections 1 and 4 of this Act is arrested, attached, or otherwise seized by process of any court in any country other than the United States, or if any suit is brought therein against the master of any such vessel for any cause of action arising from, or in connection with, the possession, operation, or ownership of any such vessel, or the possession, carriage, or ownership of any such cargo, the Secretary of State of the United States in his discretion, upon the request of the Attorney General of the United States, or any other officer duly authorized by him, may direct the United States consul residing at or nearest the place at which such action may have been commenced to claim such vessel or cargo as immune from such arrest, attachment, or other seizure, and to execute an agreement, undertaking, bond, or stipulation for and on behalf of the United States, or the United States Shipping Board, or such corporation as by said court required, for the release of such vessel or cargo, and for the prosecution of any appeal; or may, in the event of such suits against the master of any such vessel, direct said United States consul to enter the appearance of the United States, or of the United States Shipping Board, or of such corporation, and to pledge the credit thereof to the payment of any judgment and cost that may be entered in such suit. The Attorney General is hereby vested with power and authority to arrange with any bank, surety company, person, firm, or corporation in the United States, its Territories and possessions, or in any foreign country, to execute any such aforesaid bond or stipulation as surety or stipulator thereon, and to pledge the credit of the United States to the

indemnification of such surety or stipulator as may be required to secure the execution of such bond or stipulation. The presentation of a copy of the judgment roll in any such suit, certified by the clerk of the court and authenticated by the certificate and seal of the United States consul claiming such vessel or cargo, or his successor, and by the certificate of the Secretary of State as to the official capacity of such consul, shall be sufficient evidence to the proper accounting officers of the United States, or of the United States Shipping Board, or of such corporation, for the allowance and payment of such judgments: *Provided, however,* That nothing in this section shall be held to prejudice or preclude a claim of the immunity of such vessel or cargo from foreign jurisdiction in a proper case.

SEC. 8. That any final judgment rendered in any suit herein authorized, and any final judgment within the purview of sections 4 and 7 of this Act, and any arbitration award or settlement had and agreed to under the provisions of section 9 of this Act, shall, upon the presentation of a duly authenticated copy thereof, be paid by the proper accounting officers of the United States out of any appropriation or insurance fund or other fund especially available therefor; otherwise there is hereby appropriated, out of any money in the Treasury of the United States not otherwise appropriated, a sum sufficient to pay any such judgment or award or settlement.

SEC. 9. That the Secretary of any department of the Government of the United States, or the United States Shipping Board, or the board of trustees of such corporation, having control of the possession or operation of any merchant vessel are, and each

hereby is, authorized to arbitrate, compromise, or settle any claim in which suit will lie under the provisions of sections 2, 4, 7, and 10 of this Act.

SEC. 10. That the United States, and the crew of any merchant vessel owned or operated by the United States, or such corporation, shall have the right to collect and sue for salvage services rendered by such vessel and crew, and any moneys recovered therefrom by the United States for its own benefit, and not for the benefit of the crew, shall be covered into the United States Treasury to the credit of the department of the Government of the United States, or of the United States Shipping Board, or of such corporation, having control of the possession or operation of such vessel.

SEC. 11. That all moneys recovered in any suit brought by the United States on any cause of action arising from, or in connection with, the possession, operation, or ownership of any merchant vessel, or the possession, carriage, or ownership of any cargo, shall be covered into the United States Treasury to the credit of the department of the Government of the United States, or of the United States Shipping Board, or of such aforesaid corporation, having control of the vessel or cargo with respect to which such cause of action arises, for reimbursement of the appropriation, or insurance fund, or other funds, from which the loss, damage, or compensation for which said judgment was recovered has been or will be paid.

SEC. 12. That the Attorney General shall report to the Congress at each session thereof the suits under this Act in which final judgment shall have been rendered for or against the United States and such aforesaid corporation, and the Secretary of

any department of the Government of the United States, and the United States Shipping Board, and the board of trustees of any such aforesaid corporation, shall likewise report the arbitration awards or settlements of claims which shall have been agreed to since the previous session, and in which the time to appeal shall have expired or have been waived.

SEC. 13. That the provisions of all other Acts inconsistent herewith are hereby repealed.

Approved, March 9, 1920.

APPENDIX VII

MERCHANT MARINE ACT, 1920, JUNE 5, 1920, C. 250, 41 STAT. 988 (U. S. C., TITLE 46, SECS. 861–863, 871, 873, 886)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it is necessary for the national defense and for the proper growth of its foreign and domestic commerce that the United States shall have a merchant marine of the best equipped and most suitable types of vessels sufficient to carry the greater portion of its commerce and serve as a naval or military auxiliary in time of war or national emergency, ultimately to be owned and operated privately by citizens of the United States; and it is hereby declared to be the policy of the United States to do whatever may be necessary to develop and encourage the maintenance of such a merchant marine, and, in so far as may not be inconsistent with the express provisions of this Act, the United States Shipping Board shall, in the disposition of vessels and shipping

property as hereinafter provided, in the making of rules and regulations, and in the administration of the shipping laws keep always in view this purpose and object as the primary end to be attained.

SEC. 2. (a) That the following Acts and parts of Acts are hereby repealed, subject to the limitations and exceptions hereinafter, in this Act, provided:

(1) The emergency shipping fund provisions of the Act entitled "An Act making appropriations to supply urgent deficiencies in appropriations for the Military and Naval Establishments on account of war expenses for the fiscal year ending June 30, 1917, and for other purposes," approved June 15, 1917, as amended by the Act entitled "An Act to amend the emergency shipping fund provisions of the Urgent Deficiency Appropriation Act, approved June 15, 1917, so as to empower the President and his designated agents to take over certain transportation systems for the transportation of shipyard and plant employees, and for other purposes," approved April 22, 1918, and as further amended by the Act entitled "An Act making appropriation to supply deficiencies in appropriations for the fiscal year ending June 30, 1919, and prior fiscal years, on account of war expenses, and for other purposes," approved November 4, 1918;

(2) Section 3 of such Act of April 22, 1918;

(3) The paragraphs numbered 2 and 3 under the heading "Emergency shipping fund" in such Act of November 4, 1918; and

(4) The Act entitled "An Act to confer on the President power to prescribe charter rates and freight rates and to requisition vessels, and for other purposes," approved July 18, 1918.

(5) Sections 5, 7, and 8, Shipping Act, 1916.

(b) The repeal of such Acts or parts of Acts is subject to the following limitations:

(1) All contracts or agreements lawfully entered into before the passage of this Act under any such Act or part of Act shall be assumed and carried out by the United States Shipping Board, hereinafter called "the board."

(2) All rights, interests, or remedies accruing or to accrue as a result of any such contract or agreement or of any action taken in pursuance of any such Act or parts of Acts shall be in all respects as valid, and may be exercised and enforced in like manner, subject to the provisions of subdivision (c) of this section, as if this Act had not been passed.

(3) The repeal shall not have the effect of extinguishing any penalty incurred under such Acts or parts of Acts, but such Acts or parts of Acts shall remain in force for the purpose of sustaining a prosecution for enforcement of the penalty therein provided for the violation thereof.

(4) The board shall have full power and authority to complete or conclude any construction work begun in accordance with the provisions of such Acts or parts of Acts if, in the opinion of the board, the completion or conclusion thereof is for the best interests of the United States.

(c) As soon as practicable after the passage of this Act the board shall adjust, settle, and liquidate all matters arising out of or incident to the exercise by or through the President of any of the powers or duties conferred or imposed upon the President by any such Act or parts of Acts; and for this purpose the board, instead of the President,

shall have and exercise any of such powers and duties relating to the determination and payment of just compensation: *Provided,* That any person dissatisfied with any decision of the board shall have the same right to sue the United States as he would have had if the decision had been made by the President of the United States under the Acts hereby repealed.

* * * * *

SEC. 4. That all vessels and other property or interests of whatsoever kind, including vessels or property in course of construction or contracted for, acquired by the President through any agencies whatsoever in pursuance of authority conferred by the Acts or parts of Acts repealed by section 2 of this Act, or in pursuance of the joint resolution entitled "Joint resolution authorizing the President to take over for the United States the possession and title of any vessel within its jurisdiction, which at the time of coming therein was owned in whole or in part by any corporation, citizen, or subject of any nation with which the United States may be at war, or was under register of any such nation, and for other purposes," approved May 12, 1917, with the exception of vessels and property the use of which is in the opinion of the President required by any other branch of the Government service of the United States, are hereby transferred to the board: *Provided,* That all vessels in the military and naval service of the United States, including the vessels assigned to river and harbor work, inland waterways, or vessels for such needs in the course of construction or under contract by the War Department, shall be exempt from the provisions of this Act.

* * * * *

SEC. 12. That all vessels may be reconditioned and kept in suitable repair and until sold shall be managed and operated by the board or chartered or leased by it on such terms and conditions as the board shall deem wise for the promotion and maintenance of an efficient merchant marine, pursuant to the policy and purposes declared in sections 1 and 5 of this Act; and the United States Shipping Board Emergency Fleet Corporation shall continue in existence and have authority to operate vessels, unless otherwise directed by law, until all vessels are sold in accordance with the provisions of this Act, the provision in section 11 of the "Shipping Act, 1916," to the contrary notwithstanding.

* * * * *

SEC. 14. That the net proceeds derived by the board prior to July 1, 1921, from any activities authorized by this Act, or by the "Shipping Act, 1916," or by the Acts specified in section 2 of this Act, except such an amount as the board shall deem necessary to withhold as operating capital, for the purposes of section 12 hereof, and for the insurance fund authorized in section 10 hereof, and for the construction loan fund authorized in section 11 hereof, shall be covered into the Treasury of the United States to the credit of the board and may be expended by it, within the limits of the amounts heretofore or hereafter authorized, for the construction, requisitioning, or purchasing of vessels. After July 1, 1921, such net proceeds, less such an amount as may be authorized annually by Congress to be withheld as operating capital, and less such sums as may be needed for such insurance and construction loan funds, shall be covered into the Treas-

ury of the United States as miscellaneous receipts. The board shall, as rapidly as it deems advisable, withdraw investment of Government funds made during the emergency under the authority conferred by the Acts or parts of Acts repealed by section 2 of this Act and cover the net proceeds thereof into the Treasury of the United States as miscellaneous receipts.

* * * * *

SEC. 35. That the power and authority vested in the board by this Act, except as herein otherwise specifically provided, may be exercised directly by the board, or by it through the United States Shipping Board Emergency Fleet Corporation.

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(9)

Office Supreme Court, U. S.
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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1926

Nos. .....

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a corporation,
Petitioner,
vs.
ROSENBERG BROS. & COMPANY,
Respondent.
[redacted] 119

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a corporation,
Petitioner,
vs.
CALIFORNIA WINE ASSOCIATION,
Respondent.
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UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a corporation,
Petitioner,
vs.
S. L. JONES & COMPANY, a corporation,
Respondent.
[redacted] 121

BRIEF ON BEHALF OF RESPONDENTS OPPOSING PETITION FOR WRITS OF CERTIORARI.

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1926

Nos.....

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a corporation,
Petitioner,
vs.
ROSENBERG BROS. & COMPANY,
Respondent.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a corporation,
Petitioner,
vs.
CALIFORNIA WINE ASSOCIATION,
Respondent.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a corporation,
Petitioner,
vs.
S. L. JONES & COMPANY, a corporation,
Respondent.

BRIEF ON BEHALF OF RESPONDENTS OPPOSING PETITION FOR WRITS OF CERTIORARI.

In opposition to the petition for writs of certiorari herein, and in reply to the three grounds upon which the writs are sought, respondents respectfully show:

ANSWERS TO QUESTIONS PRESENTED.

I.

The shipments to Cardiff were covered by separate bills of lading naming San Francisco as port of shipment and Cardiff as port of destination. The shipments to Rotterdam were likewise covered by separate bills, and likewise named San Francisco and Rotterdam only. Hamburg was not mentioned in them. For almost two centuries courts of admiralty have held that deviation clauses similar to the clause involved in these cases give a vessel the right to call at such ports only as lie in the usual course of a voyage between the ports of shipment and destination named in the contracts. The literal right "to touch at any ports" etc., must be restricted to the course of the particular voyage described in the bills of lading, and does not give a right to carry cargo *beyond* the named terminus. Any other construction would be unreasonable as subversive of the rights of shippers and the interests of trade (*Leduc v. Ward*, 20 Q. B. D. 475, and cases cited *infra*, pp. 6, 7). *Literally* construed the deviation clause would allow a vessel to cruise the world over before coming to the destination contracted for. Hamburg lies *beyond* both Cardiff and Rotterdam: 750 miles in one case, 250 miles in the other.

The *London-Savannah* case, on which the petitioner relies, was decided on the ground of "an almost unvary-

ing practice" between the shipper and the steamship line, whereby the vessels of the latter proceeded first to a continental port before delivering cargo in England (255 Fed., page 309). Antwerp, to which deviation was to be made, was referred to in the bills of lading. Hamburg was not referred to in the bills of lading sued upon here (see 2 Fed. (2nd) 390 (392)). Petitioner tried to establish a similar practice in the instant cases, but both courts below found against it, and that finding we assume is accepted here.

The newspaper advertisements of "Hamburg, Rotterdam and Cardiff" did not apprise shippers that the vessel would call at those ports *in the order named.* Petitioner conceded this in its brief in the court below (*infra,* p. 11) on the testimony of its own witness in the trial court (R. p. 448). Newspaper advertisements form no part of the written contracts (*The Delaware,* 14 Wall. 579; *Leduc v. Ward,* 20 Q. B. D. 475).

II.

The Fleet Corporation is subject to suit as a private corporation (*Sloan Shipyards Corp. v. Fleet Corporation,* 258 U. S. 549). It has repeatedly been held that the Suits in Admiralty Act does not provide an exclusive remedy against the Fleet Corporation (*U. S. S. B. E. F. C. v. Banque Russo Asiatique London,* 286 Fed. 918 (C. C. A.) and cases cited *infra,* p. 13). The purpose of the Act was to relieve publicly owned vessels from judicial seizure (*Blamberg Brothers v. U. S.,* 260 U. S. 452). These suits were not *in rem* but *in personam* against the Fleet Cor-

poration as a private entity, and hence the Suits in Admiralty Act has no application.

Laches was not pleaded and therefore is not available as a defense (*Burnet v. Desmornes y Alvarez,* 226 U. S. 145). If 100 suits are pending where this question was raised and the question is of importance, it should have been pleaded here. As a matter of fact the point, apart altogether from pleading, is without merit (*infra,* p. 14).

The limitation period in the Suits in Admiralty Act will not be followed by analogy where suits are not "authorized" by the Act (*Prince Line, Ltd., v. U. S.,* 1926 A. M. C. 368 (Court of Claims); *The Bascobal,* 295 Fed. 299 (C. C. A.)). The Government did not ask for ceritorari in either of these cases, although the present contention was decided against it in both.

III.

The agency theory has been consistently repudiated. (*Sloan Shipyards v. U. S., supra; Providence Engineering Corp. v. Downey Shipbuilding Corp.,* 294 Fed. 641 (C. C. A. 2nd Cir. 1923), certiorari denied 68 L. Ed. 862; and cases cited *infra,* p. 16).

ARGUMENT.

These causes arise from private contracts by which petitioner, in time of peace, and as a common carrier of merchandise by sea, agreed to transport certain cargo belonging to respondents from San Francisco to Cardiff, Wales, and Rotterdam, Holland, on the steamship "West

Aleta". For the carriage of their goods respondents paid to petitioner, and the latter has retained, upwards of $165,000 in freight moneys.

The "West Aleta" sailed from San Francisco on January 6, 1920. She arrived off the coast of England on the 10th of February, and thereafter passed the entrance to the port of Cardiff, passed the entrance to the port of Rotterdam, and on February 12, 1920, stranded on Terschelling Island off the Dutch coast (R. 107, 112). She was wrecked in an endeavor to avoid entering the German mine fields, which at this time were still notoriously perilous in the North Sea and particularly near the mouth of the Elbe (R. 65, 123-166). The place where the vessel stranded lies 600 miles beyond Cardiff and 100 miles beyond Rotterdam. Her intended deviation—that is, to Hamburg and return—was about 1500 miles as to Cardiff and 500 miles as to Rotterdam.

Six federal judges have passed upon the questions involved in these cases. Judge Partridge decided the exceptions to libel adversely to petitioner (295 Fed. 372). Judge Augustus N. Hand decided adversely to petitioner on the merits in identical cases of other shippers on the same voyage of the "West Aleta" (2 Fed. (2nd) 390). Judge Kerrigan decided the instant cases on the merits adversely to petitioner (7 Fed. (2nd) 893). Circuit Judges Gilbert, Hunt and Rudkin affirmed that decision (12 Fed. (2nd) 721). For the convenience of the court we print the opinion on the merits and the affirming opinion of the Circuit Court of Appeals as an appendix to this brief.

I.

THE DEVIATION POINT.

The deviation clause is as quoted in the petition, but other clauses bearing on deviation and obviously material to the question at issue are to be found in the bills. One gave the vessel the right to go beyond the named destination and land the goods upon the vessel's return trip, in the event of certain contingencies which do not here exist. Another gave the right "to deviate for the purpose of saving life or property." Another, the right to deviate for trial trips. *These particular clauses would be superflous if the general deviation clause were to receive its* LITERAL *meaning.*

The rule has always been, however, that the general deviation clause must be construed with reference to the ports of shipment and destination specified in the bill of lading. As early as 1741 an English court so applied the rule (*Clason v. Simmons,* reported 101 Eng. Rep. 686). Since that time English and American courts have uniformly restricted the literal right conferred by the "liberty to call" clause to a liberty to touch at such ports only as lie on the usual course of a voyage between the ports of shipment and destination. Otherwise the vessel would be at liberty to engage in promiscuous cruising without any regard to the interests of cargo owners.

LEADING ENGLISH AUTHORITIES:

Leduc v. Ward, 20 Q. B. D. 475 (1888);

Margetson v. Glynn (1892), 1 Q. B. 337 (1893) A. C. 351;

James Morrison & Co., Ltd., v. Shaw, Savill & Albion, Ltd. (1916), 2 K. B. 783 affirming (1916) 1 K. B. 747;

Smith v. The King, 14 Asp. 53; 33 The Times L. R. 342 (1917);

U. S. Shipping Board v. Bunge & Born, Ltd., 40 The Times L. R. 541 (K. B. Div. 1924), affirmed 41 The Times L. R. 73 (Court of Appeal November 1924), affirmed 42 The Times L. R. 174 (House of Lords, December 1925).

Leading American Authorities:

Ardan SS. Co. v. Theband, 35 Fed. 620 (D. C. N. Y. 1888);

The Wells City, 57 Fed. 317 (D. C. N. Y. 1893); affirmed 61 Fed. 857 (C. C. A. 2nd Cir. 1894).

Hurlbut v. Turnure, 76 Fed. 587 (D. C. N. Y. 1896); affirmed 81 Fed. 208 (C. C. A. 2nd Cir. 1897).

The Maine (Italian Government Commission v. Green Star SS. Corporation), 8 Fed. (2nd) 291 (D. C. N. Y. 1924);

Smith v. U. S. S. B. E. F. C., 2 Fed. (2nd) 390 (D. C. N. Y. 1924).

The use of clauses giving liberty to deviate *in particular circumstances* indicate that the general deviation clause must receive its conventional construction (see opinion of Lord Justice Bankes in *U. S. Shipping Board v. Bunge & Born, Ltd.,* 41 The Times L. R. 73 (74)).

The phrase "in or out of the customary route" must also be construed to refer to ports lying between those of

shipment and destination. This phrase is but one of many other unsuccessful devices to obtain a right at variance with the conventional meaning of the deviation clause. Of all such phrases the District Judge said:

> "It has been held that a carrier cannot escape its obligation by reserving liberty for its vessel to go 'to any port in the world' or 'to any ports or places whatever' (Gardner v. Senhouse, supra; Clason v. Simmonds, reported 6 T. R. 531, 101 Eng. Repr. 686; Ardan Steamship Co. v. Theband, supra), whether 'in any order' (Le Duc v. Ward, 20 Q. B. D. 475; The Wells City (D. C.) 57 F. 317, affirmed in (C. C. A. 2) 61 F. 857, 10 C. C. A. 123), or 'in any rotation' (Margetson v. Glynn, (1892) 1 Q. B. 337, (1893) A. C. 351), or whether there be added the phrase 'whether in geographical order or not' (White v. Grenada Steamship Company, 13 Times L. R. 1), or the words 'although in a direction contrary to, out of, or beyond the route to said port of discharge' (Austrian Steamship Company v. The Calafiore, 194 F. 377, 114 C. C. A. 295) or those here used, 'in or out of the customary route' (The Willdomino (C. C. A.) 300 F. 5; Smith v. United States Shipping Board Emergency Fleet Corporation, supra).
>
> "The rule to be deduced from these cases is that, in the absence of unambiguous language to the contrary, a deviation clause invariably must be construed to have reference to a particular voyage between the ports of departure and destination named in a policy or bill of lading, and to have no application to any port or ports not naturally and usually ports of call on the proposed voyage. Le Duc v. Ward, supra. Addition of the words 'in or out of the customary route' may broaden a carrier's right to deviate; but they will not be construed to authorize the initiation of a new voyage before an old one is completed. Austrian Steamship Company v. The Calafiore (C. C. A. 5) 194 F. 377, 114 C. C. A. 295. As was stated

> by Lord Justice Bankes in the English Court of Appeal less than a year ago, 'the decision always has been that the general language of which these cases are illustration must be read as controlled by the governing object of the contract, namely, the prosecution of the named voyage * * *' United States Shipping Board Emergency Fleet Corporation v. Bunge and Borne Ltd., 41 T. L. R. 73, affirming 40 Times L. R. 541 (K. B. D.)." (7 Fed. (2nd) 893 (895)).

The case of

> *South Atlantic SS. Line v. London-Savannah Naval Stores Co.*, 255 Fed. 306 (5th C. C. A. 1918),

is not in conflict with the decision in the cases at bar. That case was decided on the ground that it had been the almost unvarying practice of libelant's vessels to proceed first to continental ports before going to Bristol. Previous shipments between the parties had been carried in such manner. The shipper's manager testified that in the absence of certain communications which were relied upon by the shipper the vessel would have had the right, under the bills of lading, to proceed to a continental port before going to Bristol. The port of Antwerp, to which deviation was to be made, was referred to in the bills of lading. On these grounds the *London-Savannah* case was distinguished from cases kindred to those at bar by Judge Augustus N. Hand. See *Smith v. U. S. S. B. E. F. C.*, 2 Fed. (2nd) 390 (D. C. N. Y. 1924).

Petitioner sought to bring the present cases within the rule of the *London-Savannah* case by endeavoring to prove a similar practice between these parties, but in this it failed. The District Court and the Circuit Court of Ap-

peals both found against the existence of any such practice. The vessels in petitioner's line normally proceeded to European ports in strict geographical order rather than reversing the order of ports (District Court, 7 Fed. (2nd), page 896; Circuit Court of Appeals, 12 Fed. (2nd), page 723).*

Newspaper advertisements form no part of the written contracts between the parties. Under the parole evidence rule even actual knowledge of a shipper at variance with the settled meaning of a bill of lading is incompetent.

The Delaware, 14 Wall. 579, 20 L. Ed. 779 (1871);
St. Johns N. F. Shipping Corp. v. S. A. Companhia Geral Commercial etc., 263 U. S. 119; 68 L. Ed. 201 (1923);
Leduc v. Ward, 20 Q. B. D. 475 (1888).

The advertisement of a ship for "Hamburg, Rotterdam and Cardiff" does not mean that she is to call at these ports in the order named. Petitioner's witness so testified in the court below (R. 448) and petitioner conceded the point in its brief in the Circuit Court of Appeals, from which we quote as follows:

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*Petitioner also cites *The Blandon*, 287 Fed. 722, and *The Sidonian*, 34 Fed. 805, 35 Fed. 534. In *The Blandon* the vessel was bound from New York to Valencia, Spain. She first proceeded to Philadelphia, then returned to New York and finally sailed directly from New York for Valencia. The court held that, while the call at Philadelphia was justified, the return to New York constituted a deviation not permitted by the deviation clause and the vessel was held liable.

In the present case the "West Aleta" passed Cardiff and Rotterdam, intending to call at Hamburg and then to return to the ports which had already been passed. Under the ruling in *The Blandon* this was a clear deviation.

In *The Sidonian* a vessel bound from Genoa to New York called at Palermo and it was held no deviation. The court found that Palermo was ordinarily touched at by vessels of the steamship line. It is not greatly out of the straight course between Genoa and New York.

> "No point is made by respondent that the advertisement permitted the vessel to go to the ports of Hamburg, Rotterdam and Cardiff in that order." (Appellant's brief, page 10.)

It is suggested that, because respondents had Hamburg cargo aboard the "West Aleta," they might have expected the German port to be the first port of call. This suggestion not only does violence to the separate bills of lading covering shipments to the several ports, but is unreasonable for it is inconceivable that the shipper would expect his Cardiff cargo to be carried 750 miles past that port, through the German mine fields, and back again, in order that certain other cargo might first be delivered at the most remote port. The same comment applies to Rotterdam shippers. Although one libelant had substantial cargo for both Rotterdam and Hamburg, the aggregate Hamburg cargo of the other two libelants consisted of five barrels of wine and one package of samples. The suggestion that these trivial shipments should take precedence over Cardiff and Rotterdam cargoes valued at several hundred thousand dollars is not persuasive.

II.

THE "SUITS IN ADMIRALTY ACT" POINT—LACHES—INTEREST.

Objection is made that the Suits in Admiralty Act applies to these cases and that they are barred by the limitation period prescribed by Section 5 thereof. If the Act were applicable at all, its effect would cut deeper than mere limitations, because the "West Aleta", having been

wrecked and destroyed in Europe, was no longer "employed as a merchant vessel" nor was she in "the United States or its possessions" at the time the libels were filed. The Act affords no remedy in such cases. See Sections 1 and 2, Suits in Admiralty Act, and

Blamberg Brothers v. United States, 260 U. S. 452; 67 L. Ed. 346;

James Shewan v. United States, 266 U. S. 108; 45 Sup. Ct. 45; 69 L. Ed. 192;

Nahmeh v. United States, 267 U. S. 122, 45 Sup. Ct. 277; 69 L. Ed. 536;

Rosenberg Bros. & Co. v. U. S. S. B. E. F. C., 295 Fed. 372 (instant cases on exceptions to libels).

This indeed was petitioner's own position on exceptions to the libels (R. pp. 17, 23, 41, 724-25, 789) under the misapprehension apparently that this litigation *had* been brought under the Suits in Admiralty Act. For obvious reasons *it had not*, but rather against the Emergency Fleet Corporation as a private corporation, in which capacity it is amenable to suit at such places as it transacts business.

Sloan Shipyards Corp. v. U. S. S. B. E. F. C., 258 U. S. 549; 66 L. Ed. 762; 42 Sup. Ct. 386 (1922).

Now petitioner changes front and in order to invoke the limitations of the Suits in Admiralty Act contends that this litigation must be under it. Its own first position that it cannot be was correct.

The purpose of the Suits in Admiralty Act was to relieve publicly owned vessels from judicial seizure (*Blam-*

berg Brothers v. United States, James Shewan v. United States, Nahmeh v. United States, all *supra*) and it does not provide an *exclusive* remedy against the Emergency Fleet corporation.

U. S. S. B. E. F. C. v. Banque Russo Asiatique London, 286 Fed. 918 (C. C. A. 3rd Cir. 1923), affirming 266 Fed. 897 (D. C. Pa. 1920);

John G. Wright & Co. v. U. S. S. B. E. F. C., 285 Fed. 647 (D. C. N. Y. 1922);

Wallace v. U. S. S. B. E. F. C., 5 Fed. (2nd) 234 (D. C. Wash. 1925);

Stewart v. U. S. S. B. E. F. C., 7 Fed. (2nd) 676 (D. C. N. Y. 1925);

Smith v. U. S. S. B. E. F. C., 2 Fed. (2nd) 390 (D. C. N. Y. 1924).

Laches.

Petitioner asks the court to apply the bar of laches, but this defense was not pleaded and therefore is not available.

Burnet v. Desmornes y Alvarez, 226 U. S. 145; 33 Sup. Ct. 63; 57 L. Ed. 159;

Gormley v. Bunyan, 138 U. S. 623; 11 Sup. Ct. 453; 34 L. Ed. 1086;

Shields v. Shiff, 124 U. S. 351; 8 Sup. Ct. 510; 31 L. Ed. 445.

It is said that 100 suits are pending wherein a similar question has been raised, but if the point is of such importance, it is extraordinary that it was not pleaded here. Even if otherwise worthy of determination, it can-

not be passed upon on the present record. But the point has no merit anyway. It has always been the rule that where no statute of limitations has specific application, a court of admiralty will pass upon *laches* as a matter of discretion considering prejudice to the respondent and the analogy of state statutes of limitations as vital elements in its determination.

Benedict on Admiralty, 5th ed., Secs. 470, 471.

Petitioner made no showing of prejudice; did not even try to do so. The period of limitation for suits on written contracts is four years in California (C. C. P. Sec. 337) and these suits were brought well within that period.

The cases cited by petitioner do not warrant any departure from the settled rule. The statutes invoked in the cases cited applied *ex propria vigore* and not by analogy.* Section 5 of the Suits in Admiralty Act has no such application. By its terms it applies only to "suits as herein authorized," and it has been seen that the present cases were not of the class authorized by the Act.

This precise question, both under Section 5 and also under the General Salvage Act, was decided against the Government by the Court of Claims in February, 1926.

Prince Line, Ltd., v. United States, 1926 A. M. C. 368.

**Christie-Street Commission Co. v. U. S.*, 136 Fed. 326 was a suit to recover internal taxes illegally collected. The court invoked R. S. 3227, which had specific application to such cases. *Ford Pitt Gas Co. v. U. S.*, 49 C. Cls. 224, presented the same issue and the same statute of specific application was invoked. *Engel v. Davenport*, 70 L. Ed. (Adv. Op.) 424; 46 Sup. Ct. (Adv. Op.) 410 (1926) applied the two year statute found in the Employer's Liability Act, which was specifically incorporated into the Merchant Marine Act of 1920.

Certiorari was not there sought, and the judgment has been paid.

The Circuit Court of Appeals for the 3rd Circuit ruled against the same argument in

The Bascobal, 295 Fed. 299 (1923);

Certiorari was not applied for.

Interest.

Interest at the legal rate was properly allowed.

Standard Oil Co. v. United States, 267 U. S. 76; 45 Sup. Ct. 211; 69 L. Ed. 519 (1925);

Luckenbach v. The Thekla, 266 U. S. 328; 45 Sup. Ct. 112; 69 L. Ed. 313 (1924);

U. S. S. B. E. F. C. v. Texas Star Flour Mills 12 Fed. (2nd) 9, (C. C. A. 5th Cir. 1926).

III.

THE AGENCY POINT.

The "agency" defense is that the Fleet Corporation made these contracts for and on behalf of the United States, and hence that the former may escape liability.

This point was neither pleaded nor presented to the trial court. It was first suggested in the Circuit Court of Appeals. There it was properly rejected, as it had already been decided adversely to petitioner by *this* court.

The contracts were made by the Fleet Corporation as principal, and not as agent, which appears from the following bold faced text in each bill of lading:

"Shippers are requested to carefully read this bill of lading which constitutes the contract between the shipper or agent of the owner of the property carried and the United States Shipping Board Emergency Fleet Corporation."

This defense of "agency" has, as we read the authorities, been consistently repudiated.

Sloan Shipyards Corp. v. U. S. S. B. E. F. C., 258 U. S. 549; 42 Sup. Ct. 386; 66 L. Ed. 762 (1922);

Providence Engineering Corp. v. Downey Shipbuilding Corp., 294 Fed. 641 (C. C. A. 2nd Cir. 1923); certiorari denied 68 L. Ed. 862;

U. S. S. B. E. F. C. v. Texas Star Flour Mills, 12 F. (2nd) 9 (C. C. A. 5th, 1926);

Florida Grain & Elevator Co. v. U. S. S. B. E. F. C., 3 F. (2nd) 314 (D. C. Fla. 1924);

U. S. S. B. E. F. C. v. O'Shea, 5 F. (2nd) 123 (Dist. Col. 1925);

Smith v. U. S. S. B. E. F. C., 2 Fed. (2nd) 390 (D. C. N. Y. 1924).

The attempted distinction between contracts of ship construction and contracts of ship operation is suggested here for the first time and is, we think, plainly immaterial. In carrying goods for hire in time of peace the Fleet Corporation was, if anything, engaging more clearly in business, as against strictly governmental activity, than in constructing ships in world war times.

CONCLUSION.

None of the considerations outlined in the rules of this court (Rule 35, Section 5 (b)) as gound for review on writs of certiorari seem to us to be here presented. The decision of the Circuit Court of Appeals is not only not in conflict with other decisions, but is based upon and in accord with a line of decision which has existed in courts of admiralty for almost two centuries. The questions as to the status of the petitioner, its liability on contracts, *laches* and interest, have repeatedly been adjudicated and petitioner is bound by such prior decisions.

It is respectfully submitted that the petition for writs of certiorari should be denied.

Respectfully submitted,

J. M. MANNON, JR.,
FARNHAM P. GRIFFITHS,
McCUTCHEN, OLNEY, MANNON & GREENE,
Attorneys for Respondents.

Dated: San Francisco,
September 24, 1926.

ENTRY OF APPEARANCE

The undersigned hereby enter their appearance in the above entitled cases as counsel for respondents.

J. M. MANNON, JR.,
FARNHAM P. GRIFFITHS,
McCUTCHEN, OLNEY, MANNON & GREENE,
Attorneys for Respondents.

ADMISSION OF SERVICE

Due service and receipt of a copy of the within brief is hereby admitted this.....day of....., 1926.

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Attorneys for Petitioner.

Appendix.

Appendix I.

ROSENBERG BROS. & CO. v. UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION. CALIFORNIA WINE ASS'N v. SAME. S. L. JONES & CO. v. SAME.

(District Court, N. D. California, S. D. September 23, 1925.)

KERRIGAN, District Judge. These three cases, tried together, are suits brought in the names of the shippers and owners of cargo lost on the steamship West Aleta, when that vessel stranded on Terschelling Island, more than five years ago.

The West Aleta left San Francisco with a full cargo on January 6, 1920. Libelants' shipments were destined for Cardiff, Wales, and Rotterdam, Holland, and consisted of rice, nutmegs, and 15,000 barrels of wine and brandy. Bills of lading were issued in the usual form, in one case naming San Francisco as the port of departure and Cardiff as that of destination, and in the other cases San Francisco and Rotterdam as such respective ports. In none of them was any reference made to Hamburg, Germany; but, inasmuch as each of the libelants had consigned a shipment to that port, they had actual knowledge that the vessel intended to call there.

In each case the opening clause of the bill of lading reads as follows: "Received in apparent good order and condition * * * at San Francisco * * * to be transported by the ship West Aleta, * * * *with leave* * * * *to touch at any port or ports in any rotation or order, in, or out of, the customary route, and to call at any port or ports*

more than once unto the port of Cardiff (Rotterdam). * * *"

Stamped on the face of the instrument is a clause reserving liberty to deviate for trial trips, and in its main body a clause has been inserted to permit deviations "for the purpose of saving life or property." No other provision is made for deviation from the direct route between San Francisco and the destination named, which in each case, as stated, was Rotterdam or Cardiff.

For reasons of her own, not amounting to necessity, after proceeding safely through the Panama Canal, and across the Caribbean Sea and the Atlantic Ocean to the entrance to Bristol Channel, on which Cardiff is situated, the West Aleta proceeded through the Straits of Dover into the North Sea. After passing the entrance to Rotterdam Harbor, when about 100 miles beyond that point, she stranded on Terschelling Island, and with her cargo became a total loss. Admittedly, she was on her way to Hamburg, a port 750 miles beyond Cardiff and 250 miles beyond Rotterdam, intending to visit those three ports in the reverse of their geographical order.

At the time of the wreck the North Sea at the mouth of the Elbe was still dangerous for navigation, because of the presence of floating mines. The captain of the West Aleta appears to have lost his vessel in an endeavor to avoid areas containing such mines, and to have been guilty of faulty navigation in doing so. For this, of course, no claim can be made; but for his failure to discharge the Cardiff and Rotterdam cargoes before passing those ports libelants seek to recover their values,

relying on the familiar doctrine of deviation to create an absolute liability in their favor.

It is clear that such a liability must be established if a recovery is to be allowed, for the real parties in interest herein are cargo insurers, who have made full payment of losses under their policies, and now stand subrogated to the claims of the insured. Each of the bills of lading contains a "benefit of insurance" clause in favor of respondent. Before, however, it can avail itself of this defense it has cast upon it the burden of explaining the deviation above described from the natural, direct, and ordinary route.

Respondent's first contention is that under the "liberty to call" or "deviation" clause above set forth, the West Aleta had a right to make the voyage which she was pursuing at the time of her loss. While it is true that the right of deviation given by this clause is very broad, it nevertheless is not unlimited. The law has, in fact, attached to it a fixed and certain meaning, older than the oldest American court of admiralty, which limits its application to ports substantially on the course of the voyage described, *between its termini and before the port of destination.*

Regarding the rule as settled by earlier cases, more than a century ago Lord Mansfield held a general leave "to touch and stay at any ports and places whatsoever, without being deemed a deviation," must be confined to ports "in the course of the voyage" to the destination named in a policy of insurance. "Though at the trial I was struck with the largeness of these words," said that eminent

judge, "as giving liberty to the ship to go any where she pleases, to any island, in any course, it must be confined to the voyage insured; that is, to some port in the course of the voyage to (the ports of destination); *otherwise, I do not see where the voyage is to end.* They might make it last two years, * * * and the larger the words are the more necessary is this construction, else the ship might trade and barter without any termination." Gardner v. Senhouse, 3 Taunt. 16, 128 Eng. Repr. 7. (Italics mine.)

I have been referred to no case in this country which impairs the force of this reasoning. It was accepted in Smith v. United States Shipping Board Emergency Fleet Corporation (D. C.) 2 F. (2d) 390, and appears to me to be supported by an almost unbroken line of American decisions. Ardan S. S. Co. v. Theband (D. C.) 35 F. 620; Hurlbut v. Turnure (D. C.) 76 F. 587, affirmed in (C. C. A. 2) 81 F. 208, 26 C. C. A. 335; Swift & Co. v. Furness, Withy & Co. (D. C.) 87 F. 345; The Blandon (D. C.) 287 F. 722; The Willdomino (C. C. A.) 300 F. 5.

In Austrian Union S. S. Co. v. Calafiore (C. C. A. 5) 194 F. 377, 114 C. C. A. 295, a vessel on a voyage from Palermo, Italy, to New Orleans, stopped en route at Tampa, Fla., to take on cargo for the return voyage. As a result of the delay libelant's cargo of lemons was damaged. A clause in the bill of lading gave the carrier "liberty * * * to proceed to and stay at any ports or places whatsoever (although in a direction contrary to, or out of, or beyond, the route to said port of discharge), once or oftener, in any order, backwards or forwards, for the purpose of receiving and for delivering coals, cargo, or pas-

sengers, *or for any other purpose;* and all such ports * * * shall be deemed within the intended voyage." A broader right of deviation can scarcely be conceived; yet it was held, and I think rightly, that the ship had not stopped at Tampa for the purposes of the voyage, but for those of *another* voyage, to be undertaken after New Orleans was reached, that such action was unquestionably beyond the contemplation of the shippers at the time the bill of lading was signed, and that the carrier therefore was liable, although, as it will be observed, Tampa was on the course of the voyage named in the bill of lading. This is perhaps the extreme example of Lord Mansfield's rule of construction that "the larger the words are the more necessary" does strict construction become. Gardner v. Senhouse, supra.

In the present case respondent's testimony indicates that the principal reason why the West Aleta was ordered to take the course which she followed was convenience of the vessel in loading her return cargo.

Smith v. United States Shipping Board Emergency Fleet Corporation, supra, is very much in point here, because it involved claims for the loss of other cargo on the same ship and voyage which gave rise to these suits. The only distinction to be made is that there all of the cargo was shipped to Rotterdam; whereas, in the cases at bar, the greater part of it (in point of value) was destined for Cardiff, and the deviation attempted was greater by 1,000 miles than in that case. Judge Augustus Hand concluded there that "the permission 'to touch at any port or ports in any rotation or order, in or out of the customary route',

related to stopping in ports on the way to Rotterdam, either in or out of the geographical order."

This, counsel argue, absolutely disregards the phrase "out of the customary route," because without the use of these words a ship might touch at any such port, and such a construction deprives them of all meaning. That the words quoted may be redundant to the power which they purport to enlarge, without in fact enlarging it, must of course be granted. The books are full of cases in which language has fallen short of the meaning which it was intended to express. Certainly the entire clause must be construed with the utmost strictness against the carrier (Poor on Charter Parties and Ocean Bills of Lading, §69; The Caledonia, 157 U. S. 124, 137, 15 S. Ct. 537, 39 L. Ed. 644; Pacific Coast Steamship Co. v. Bancroft-Whitney Co. [C. C. A. 9] 94 F. 180, 187, 36 C. C. A. 135), and its meaning may not be extended further than its terms can reach.

Baldly stated, it gives permission "to touch at any port or ports * * * in or out of the customary route * * * unto the port of Cardiff (Rotterdam). * * *" The phraseology is not "unto, beyond, and back to the port of Cardiff," but simply "unto the port of Cardiff." To have held that there was no deviation from the agreed voyage, it would have been necessary for Judge Hand to adopt an unduly liberal, not to say strained, construction of this language.

The general attitude, both of the English and American courts, toward exemptions such as the one herein, may be seen from a résumé of the decisions. It has been held that a carrier cannot escape its obligation by reserving liberty for its vessel to go "to any port in the world," or "to

any ports or places whatever" (Gardner v. Senhouse, supra; Clason v. Simmonds, reported 6 T. R. 531, 101 Eng. Repr. 686; Ardan Steamship Co. v. Theband, supra), whether "in any order" (Le Duc v. Ward, 20 Q. B. D. 475; The Wells City [D. C.] 57 F. 317, affirmed in [C. C. A. 2] 61 F. 857, 10 C. C. A. 123), or "in any rotation" (Margetson v. Glynn, [1892] 1 Q. B. 337, [1893] A. C. 351), or whether there be added the phrase "whether in geographical order or not" (White v. Grenada Steamship Company, 13 Times L. R. 1), or the words "although in a direction contrary to, out of, or beyond the route to said port of discharge" (Austrian Steamship Company v. The Calafiore, 194 F. 377, 114 C. C. A. 295) or those here used, "in or out of the customary route" (The Willdomino [C. C. A.] 300 F. 5; Smith v. United States Shipping Board Emergency Fleet Corporation, supra).

The rule to be deduced from these cases is that, in the absence of unambiguous language to the contrary, a deviation clause invariably must be construed to have reference to a particular voyage between the ports of departure and destination named in a policy or a bill of lading, and to have no application to any port or ports not naturally and usually ports of call on the proposed voyage. Le Duc v. Ward, supra. Addition of the words "in or out of the customary route" may broaden a carrier's right to deviate; but they will not be construed to authorize the initiation of a new voyage before an old one is completed. Austrian Steamship Company v. The Calafiore (C. C. A. 5) 194 F. 377, 114 C. C. A. 295. As was stated by Lord Justice Bankes in the English Court of Appeal less than a

year ago, "the decision always has been that the general language of which these cases are illustration must be read as controlled by the governing object of the contract, namely, the prosecution of the named voyage. * * *" United States Shipping Board Emergency Fleet Corporation v. Bunge and Borne, Ltd., 41 T. L. R. 73, affirming 40 Times L. R. 541 (K. B. D.).

The only question presented, therefore, is one of fact: Whether Hamburg is a port which lies substantially on the course of a voyage from San Francisco to Cardiff or Rotterdam; and this question it is impossible to answer in the affirmative.

The next point made by respondent is that there is a well-known and fully recognized custom of the port of San Francisco for vessels engaged in the so-called European Pacific service, with ports of discharge in the Hamburg-Bordeaux range, to call at those ports (including Hamburg, Rotterdam, and Cardiff) in any order, without regard to their particular geographical location. In passing on this contention, Judge Hand said as follows: "I cannot say that the business usage, whereby no more than 18 ships, at most, of the respondent had usually proceeded from the Pacific Coast to Hamburg before discharging at Rotterdam, and had only done this for a period of about a year, can be regarded as a general and uniform custom having the force of law, of which shippers should take notice." Smith v. United States Shipping Board Emergency Fleet Corporation (D. C.) 2 F. (2d) 390, 391.

It is elementary that a custom or usage, to be binding, must be definite, uniform, and well known. Furthermore,

it must be established by clear and satisfactory evidence, so that it may be justly presumed that the parties had reference to it in making their contract. Bowling v. Harrison, 47 U. S. (6 How.) 248, 12 L. Ed. 425; The Gualala (C. C. A. 9) 178 F. 402, 102 C. C. A. 548. It must, in addition, be shown to be long-established, reasonable, and generally acquiesced in (Sweet v. Leach, 6 Ill. App. 212); requirements which are sustained by all of the authorities (3 Jones on Evidence, §462). If the proof leaves it uncertain, either as to the fact or as to its effect on the matter with which it is related, it is void. United States Shipping Board Emergency Fleet Corporation v. Levensaler, 290 F. 297, 53 App. D. C. 322.

Proof was made at the trial that the European Pacific Line did not commence operations until 1919. During the World War there had been no such service at all. A list of sailings, which was produced by respondent, shows that there were not 18 vessels engaged in it, as the court was led to believe in the West Aleta case, but only 12. The Effingham, which left San Francisco on December 17, 1919, went to Hamburg before calling at London and Liverpool, but at the time the West Aleta sailed had not yet crossed the Atlantic. The Orani, which sailed on October 29, 1919, also departed from the geographical order of call, but touched only at ports in the United Kingdom. The Cockaponset commenced its voyage only 9 days before the departure of the West Aleta. Of the 9 other vessels listed, 3 had but one port of destination, and 6 called at several ports, strictly in their natural geographical order.

On such evidence as this, it is impossible to base a finding that there was a practice for vessels in the European Pacific trade to call at European continental ports out of their geographical order. Its tendency, if it has one, is to prove an opposite practice. The burden was on respondent to establish by clear and satisfactory evidence a custom at and prior to the time at which arrangements were made with respect to the West Aleta's cargo, and evidence of the practice subsequent to that time is clearly incompetent. No usage, as distinguished from a custom, has been shown; for to be legally recognized a usage must be proved to have been assented to by the parties, and to have been so notorious as to be presumed to have been assented to by them. 2 Williston on Contracts, 1276. The alleged custom invoked by respondent, therefore, has not been established by the evidence.

Nor is the point well taken that libelants knew of the intention of the operators of the West Aleta to send her to Hamburg before having her proceed to Rotterdam and Cardiff. If there is any rule of law which is settled beyond contradiction, it is the rule that parol evidence is inadmissible to vary the terms of a written contract. Except where some custom or usage exists, so well-established and generally known that it must be taken to be incorporated with the contract, and at the same time not inconsistent with its clearly expressed terms, such evidence must be disregarded. Le Duc v. Ward, supra; The Delaware, 81 U. S. (14 Wall.) 579, 20 L. Ed. 779; 3 Jones on Evidence §459. Objection of the strongest nature has been made to the admission of the evidence of custom just

referred to, because the deviation clause is plain and unambiguous, with a clear and settled meaning, and cases have been cited which seem conclusive of its inadmissibility. Grace v. American Central Insurance Company, 109 U. S. 278, 3 S. Ct. 207, 27 L. Ed. 932; Portland Flouring Mills Company v. British & Foreign Marine Insurance Co. (C. C. A. 9) 130 F. 860, 65 C. C. A. 344, certiorari denied, 195 U. S. 629, 25 S. Ct. 787, 49 L. Ed. 352.

Apart from this question, however, we have seen that it was entirely insufficient to establish the alleged custom. The proof offered by the respondent, of other facts and circumstances extraneous to the bill of lading, must therefore be disregarded under the rule of evidence adverted to. In other words, all evidence tending to show that libelants had actual knowledge of the proposed itinerary, all evidence of the contents of the newspaper advertisements published before the vessel sailed, in brief, everything tending to indicate that libelants knew or ought to have known of the course (inconsistent with these bills of lading) which was intended to be taken, must be excluded from consideration. St. Johns, N. F., Shipping Corporation v. S. A. Companhia Geral Commercial Do Rio de Janeiro, 263 U. S. 119, 44 S. Ct. 30, 68 L. Ed. 201; The Delaware, 81 U. S. (14 Wall.) 579, 20 L. Ed. 779.

My attention has been called to Judge Partridge's decision in the case of W. R. Grace & Co. v. Toyo Kisen Kabushiki Kaisha, 7 F. (2d) 889, decided as lately as September 15, 1925, and both parties insist that it is decisive here. While it is true that certain language there employed is favorable to respondent's contentions, I think

the reasoning of the opinion distinctly favors the libelants. That case had to do with a shipment of nitrates from Iquique and Antofagasta, Chile, to Honolulu. The vessel, instead of taking the direct route, proceeded northward, stopping at various ports, to San Francisco, and thence to Portland, Or., where she completed cargo. Immediately after leaving that port, she was destroyed by fire, and all her cargo was lost. It was not claimed that she should have taken the direct route. On the contrary, libelant's claim was that the "usual and customary" route was northerly to San Francisco, and *thence* directly to Honolulu. Liability as for a deviation was asserted, in spite of a clause of the bill of lading which gave the carrier "liberty to touch at any port or ports * * * in or out of the customary route," because of the inclusion of Portland in the vessel's itinerary. Judge Partridge held that there was no such liability, and I may say that I think his decision absolutely correct.

After citing numerous cases, including that of The West Aleta, in which the doctrine of Glynn v. Margetson, supra, has been followed, he stated that the real intent of the contract between shipper and carrier, with which all deviations must be consistent if they are to be excused by a "liberty to call" clause, is the main commercial purpose of that contract, and that accordingly the propriety of any particular deviation is a question of fact in each case, with no fixed rule for its determination. With this there can be no quarrel. Where, as in the case then at bar, there is a well-established custom, of which the shipper has knowledge, for vessels bound for a given destination to proceed

upon an indirect route, under the terms of even the narrowest "liberty to call" clause, there would be no liability for doing so, and whether or not a further deviation from that route would be justified by a clause including ports "in or out of the customary route" is another question, which was not decided by Judge Partridge, because at the time of shipment in the case before him, as was known both to libelants and the general public, the customary route had been changed, so as to include the port in question.

Parol evidence is, as he stated, admissible to show what the usual route is, in interpreting the deviation clause, no matter how great its latitude. But it never is admissible to prove knowledge on the part of, or a parol understanding with, a shipper that *the particular vessel* will deviate from the route between its ports of departure and destination, for this in effect would be to permit a contradiction of the implied provision of every bill of lading that no deviation inconsistent with its general commercial purpose will be undertaken. Le Duc v. Ward, supra. In W. R. Grace & Co. v. Toyo Kisen Kabushiki Kaisha, supra, it was not a contradiction of the contract of carriage to permit evidence to be given that four of the respondent's vessels, with the advertised intention of changing the customary route, prior to libelant's shipment, had returned via Portland. The fact that libelant had personal knowledge of the intention of the vessel on which his goods were to be carried to pursue that route was not essential to the result of the case, and must be regarded as purely accidental, except in so far as it goes to show a general

knowledge of the change in custom. It may be added that, if the mere receipt of notice of an intention to deviate, in a manner inconsistent with the terms of a bill of lading, is sufficient to permit a carrier to do so with impunity, the protection of a written instrument is very slight indeed.

Such being the case, it is apparent under the evidence that in proceeding toward Hamburg the West Aleta was guilty of a deviation which made her owner liable as an insurer for the safety of the cargo. At this point, however, the contention is made by respondent that it is entitled to the full benefit of the insurance paid to libelants for their losses. The rule is well established that a deviation changes the character of a voyage so essentially that a shipowner who has deviated cannot claim the benefit of the terms of a bill of lading. An unjustifiable deviation vitiates or avoids the contract of carriage, and the failure to comply with what in effect is a condition or warranty not to deviate displaces it. The Sarnia (C. C. A.) 278 F. 459, 463; Thorley v. Orchis Steamship Company, [1907] 1 K. B. 660. In such circumstances, the carrier cannot escape liability by reason of the relieving clauses which have been inserted in the bill of lading for its benefit. St. Johns, N. F., Shipping Corporation v. S. A. Companhia. Geral Do Rio de Janeiro, supra; Pacific Coast Co. v. Yukon Independent Transportation Co. (C. C. A. 9) 155 F. 29, 83 C. C. A. 625; Carver on Carriage of Goods by Sea, §287. Since it is not a condition precedent to suit for loss, after a deviation, that the cargo owner shall have been deprived of his right against the insurer (The Citta di Messina, 169 F. 472, 475; [D. C.] Smith v. United

States Shipping Board Emergency Fleet Corporation, supra), this contention of respondent also must fail.

It is further argued that the United States Shipping Board Emergency Fleet Corporation is only suable as a corporation under the Suits in Admiralty Act of 1920 (Comp. St. Ann. Supp. 1923, §§1251¼-1251¼*l*), under the provisions of which all rights of action are barred. On exceptions to the libels in these cases, Judge Partridge held that the suits were not barred or affected by the provisions of that act (Rosenberg Bros. & Co. v. United States Shipping Board Emergency Fleet Corporation (D. C.) 295 F. 372), and such was Judge Hand's opinion in The West Aleta, supra. I think the question requires no further discussion.

The final contention, that laches are imputable to libelants, is without merit, for the reason that these suits were brought well within the four-year period of limitations prescribed by the California statute. A court of admiralty sitting in this state will by analogy follow its statutes of limitations (Pacific Coast Steamship Co. v. Bancroft-Whitney Co., supra), and according to those there have been no laches here.

As the measure of damages for failure to deliver cargo is the market value of the goods at the port of destination at the time the vessel should have arrived (36 Cyc. 275; St. Johns, N. F., Shipping Corporation v. S. A. Companhia Geral Do Rio de Janeiro, supra; Carver on Carriage of Goods by Sea [6th Ed.] §727), libelants are entitled to recover the values set forth in the agreed statements of fact. It is therefore ordered that decrees issue in favor

of libelant California Wine Association for the sum of $642,871, interest, and costs; in favor of libelant Rosenberg Bros. & Co. for the sum of $20,782.79, interest, and costs; and in favor of libelant S. L. Jones & Co. for the sum of $4,481.66, interest, and costs.

Appendix II.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION v. ROSENBERG BROS. & CO. SAME v. CALIFORNIA WINE ASS'N. SAME v. S. L. JONES & CO.

(Circuit Court of Appeals, Ninth Circuit. May 10, 1926. Rehearing Denied June 14, 1926.)

Before GILBERT, HUNT and RUDKIN, Circuit Judges.

HUNT, Circuit Judge. These are appeals in admiralty from decrees against the Shipping Board Emergency Fleet Corporation in three cases, consolidated, instituted by the shippers and owners of cargoes lost on the steamship West Aleta of the European Pacific line, operated by the respondents under contract by Williams, Dimond & Co., from ports on the Pacific Coast to ports in the United Kingdom and the continent of Europe. The suits were carried on as between the cargo insurers, who paid the losses in full, and the operators of the ship, who were fully covered by insurance against any damages that might have to be paid for deviation.

Libelants claimed for failure to deliver, caused by deviation from the voyage. Respondents answered that the loss was occasioned by stranding, error in navigation, peril of the sea, and that, under the terms of the contract of carriage and the Harter Act (27 St. 445; Comp. St. §§8029-8035), they were not liable.

The goods were shipped in 1920 at San Francisco under separate bills of lading, some naming Cardiff, Wales, some naming Rotterdam, Holland, as the ports of destination. Taking the bill of lading in one of the cases as an exem-

plar, it sets forth receipt of the merchandise to be transported by the West Aleta to be carried on said vessel operated by or on account of the United States Shipping Board Emergency Fleet Corporation or the United States Shipping Board, "with leave * * * to touch at any port or ports in any rotation or order in or out of the customary route, and to call at any port or ports more than once, unto the port of Cardiff, and there deliver in like apparent good order and condition at the vessel's tackles under order," etc. On the face of the bill of lading there was the following clause: "The vessel shall have liberty to deviate for the purpose of making trial trips and shall pay any reasonable increased cost of cargo insurance, if any, incurred in consequence thereof." After a description of the goods there is the following clause: "It is mutually agreed that the ship shall have liberty * * * to deviate for the purpose of saving life or property." And in the conditions included on the reverse side of the bill of lading this clause: "Also, that if on account of weather, * * * war, or other disturbances * * * or any causes beyond the control of the carrier, it should be considered impracticable or unsafe in the opinion of the master to land the goods at the port to which they are destined, the master is to have the option of landing the goods at any other port which he may consider safe, or retain same on board until the vessel's return trip. * * * "

The ship left San Francisco in January, 1920, and on February 10th sighted Bishop Rocks, a part of the Scilly Islands which mark the entrance to Bristol Channel. She did not proceed directly to Cardiff, but, passing the en-

trance to the port, proceeded easterly through the Straits of Dover, and on February 11th was abreast of the Hook of Holland at the entrance to the port of Rotterdam. The ship did not go to Rotterdam, but took a course for Hamburg, Germany. The master, apprehensive because of mines planted in the North Sea during the World War, changed his course on February 11th, and on the 12th, believing he was safely out of the mine fields, headed east for what he took to be Nordeney light ship. Immediately after the last change of course the ship struck a sand ridge which extended from the westerly end of Terschelling Island, and soon broke in two.

For more than a month prior to the sailing of the ship the European Pacific line advertised the West Aleta for "Hamburg, Rotterdam, and Cardiff" in the Guide, a shipping paper of San Francisco. One insurance policy was issued to the California Wine Association, covering wine to Cardiff and wine and liquor to Rotterdam on the West Aleta, "* * * via Panama Canal to Rotterdam and Cardiff." The policy had a clause, "held covered at a premium to be arranged in case of deviation or change of voyage, or of any omission or error in the description of the interest, vessel, or voyage."

Using the Cardiff receipt and bill of lading as comprehending the several cases, we have an original contract on a voyage from San Francisco, port of shipment, to Cardiff, port of destination, with leave to the ship to touch at any ports in any rotation or order, in or out of the customary route, and to call at any port or ports more than once.

An interpretation of the contract solely by legal import and construction of the words used, is that the voyage was to Cardiff, with the privilege of going to other ports in or out of order between the termini, in prosecuting the real objects of the adventure intended by the parties. We cannot regard the language of the liberty to call clause, permitting the ship to call at any ports in any order in or out of the customary route, as extensive enough to embrace in the voyage to Cardiff permission to go 750 miles beyond Cardiff and to call at Hamburg and then return to Cardiff. Gawdner v. Senhouse, 128 En. R. 7. Established rules of construction of policies are that the right of liberty to call is to be availed of as subordinate to the principle that the port or ports which the assured may visit shall be only those which are properly in the course of the voyage described, and in pursuance of the general purposes of the adventure embraced within the termini named in the policies. Glynn v. Margetson, 1 Q. B. 337; Id., [1893] L. R. 351. The Supreme Court of Massachusetts in Seccomb et al. v. Provincial Insurance Co., 10 Allen (92 Mass.) 305, said: "The only safe rule of construction is that which confines the meaning of a clause in a voyage policy giving liberty to touch at different ports to a permission to visit those only which are within the scope of the voyage insured." The scope of the voyage may include ports not exactly in the ordinary track of the specific voyage, but not those far outside or beyond the ordinary track. The Wells City (D. C.) 57 F. 317, affirmed 61 F. 857, 10 C. C. A. 123. Bringing the principle to the immediate case, the ports to which the West Aleta could go were those which, in a business sense, would be passed in the usual course

of the voyage from San Francisco to Cardiff. A few of the many well-considered cases are Leduc v. Ward, 20 Q. B. D. (1888); U. S. Shipping Board v. Bunge & Bern, 41 T. L. R. 73; Davis v. Garrett, 130 E. R. 1456; Ardan S. S. Co. v. Theband (D. C.) 35 F. 620. But nothing in the bill of lading justifies the view that a voyage to Hamburg was the adventure in contemplation. Smith v. U. S. Shipping Board, etc. (D. C.) 2 F. (2d) 390.

There is strength too, in the reasoning of the court in United States Shipping Board v. Bunge & Bern, supra, that the general liberty to deviate for the purpose of saving life and property gives some indications pointing to the view that the parties meant to give to their language a limited sense. In emergent circumstances, to save life or property, the ship could deviate without any restriction. Having such a clause under examination, the English Court of Appeals, speaking by Lord Bankes in United States Shipping Board v. Bunge & Bern, supra, said: "It appears to me that the clause itself contains indications which, in my opinion, point to the conclusion that the parties intentionally used the language they did in its limited conventional sense. A distinction is drawn between calling at a port for bunkering or supplies and deviating generally; the right to deviate without any restriction is conferred for the purpose of saving life or property. To obtain bunkers or supplies the liberty is confined to the right 'to call at any port or ports in any order.' There seems to me to be reason in this."

But it is said that the usage and practice of the trade gave to the bill of lading of the West Aleta a meaning

which allowed her to go to Hamburg, Rotterdam, and Cardiff, for which she was held out as a common carrier, in the order in which traffic and cargo conditions dictated. Doubtless underwriters are presumed to have knowledge of what is usually done by a ship in such a voyage, and the description of the voyage in the policy refers, of course, to the usual manner of making it. But the oral testimony in support of the contention that the usual and customary manner of performing a voyage from San Francisco to Cardiff was by going first to Hamburg and then to Rotterdam and then back to Cardiff lacks precision and is not convincing. Out of twelve vessels in the European Pacific service, only two called at Hamburg; none went to Rotterdam. There was testimony that the ships of the European Pacific line recognized a "range of ports" which included Bordeaux on the south, and Hamburg on the north, and would include the east coast of Ireland, and that the practical understanding of the liberty clause of the West Aleta was to go to any port in any order within the range. Whether oral testimony of the practical understanding was admissible may well be doubted. (Aetna Ins. Co. v. Sacramento Stockton S. S. Co. [C. C. A.] 273 F. 55; The Delaware, 81 U. S. [14 Wall.] 579, 20 L. Ed. 779; Arnold on Marine Ins. §56). But, passing that point and treating such evidence as legally received in defining what was the customary route, it fell far short of establishing a usage which would countervail the general maritime practice with reference to which the policy was made, that the ship shall pursue a direct course between her two termini, with permission to call only at any port or ports in or interjacent to the customary route (The Reeside, Fed. Cas. No.

11657). Our conclusion is that there was a deviation, the effect of which was to end the contract between the shippers and the carrier, thus making the carrier responsible for the loss of the merchandise. Pacific Coast v. Yukon Ind. Trans. Co., 155 F. 29, 83 C. C. A. 625; The Sarnia (D. C.) 278 F. 459.

Inasmuch as the deviation displaced the contract, the provisions of the Harter Act of 1893 afford no protection from the consequences of the wrongful act. As giving some support to that opinion, reference may be had to the concluding part of section 3 of that act, where the words limit the liability in cases of loss arising from saving or attempting to save life or property at sea "or from deviation in rendering such services." It is reasonable to say that, where there has been a deviation for a purpose other than to save life or property, there is liability.

The damages were measurable by the market value of the goods at the destination to which the ship undertook to carry them. St. Johns N. F. Ship Corp. v. Companhia, 263 U. S. 119, 44 S. Ct. 30, 68 L. Ed. 201; U. S. S. Co. v. Haskins, 181 F. 962, 104 C. C. A. 426. No avoidance of the consequence of the act of deviation can be predicated upon the grounds that the damages must be limited to such additional insurance premium as the shippers had to pay on account of the deviation. Respondent was insured against liability for deviation, and the defense in this suit on behalf of respondent is by the insurer, successor to American Steamship Owners' Mutual Protection & Indemnity Association. It is a fact that in-

surance was paid in full to libelants, but it is generally held that, upon payment of the loss, the insurer was subrogated to the rights of the insured. That doctrine was sustained by this court in Pacific Coast Steamship Co. v. Bancroft Whitney Co., 94 F. 180, 36 C. C. A. 135, and Steamship Wellesley v. Hooper & Co., 185 F. 733, 108 C. C. A. 71; The Citta Di Messina (D. C.) 169 F. 472.

It is suggested by the appellant that the Fleet Corporation is not liable because it was only the agent for the carrier, the United States. In Sloan Shipyard Corporation v. U. S. Shipping Board, 258 U. S. 549, 42 S. Ct. 386, 66 L. Ed. 762, it was held that the Fleet Corporation is answerable for its acts, and may not be relieved upon the ground of agency. Justice Holmes there stated the general rule that a person within the jurisdiction always is amenable to the law, and continued: "Supposing the powers of the Fleet Corporation to have been given to a single man, we doubt if anyone would contend that the acts of Congress and the delegations of authority from the President left him any less liable than other grantees of the power of eminent domain to be called upon to defend himself in court. An instrumentality of government he might be and for the greatest ends, but the agent, because he is agent, does not cease to be answerable for his acts." The present suit is not one against the United States, but against the Fleet Corporation, and, if the act of the Fleet Corporation was unlawful even though a suit might have been brought against the United States, nevertheless those injured are not barred of a remedy against the agent that did the wrongful act. In re Eastern Shore Shipbuilding Cor-

poration, U. S. Shipping Board, etc., v. Wood (D. C.) 274 F. 893; Providence Engineering Corp. v. Downey Shipbuilding Corp. (C. C. A.) 294 F. 641; certiorari denied 264 U. S. 586, 44 S. Ct. 334, 68 L. Ed. 862; The Panola (C. C. A.) 9 F. (2d) 733, 1925 A.M. C. 1173; United States Shipbuilding Corp., etc., v. Banque Russo Asiatique (C. C. A.) 286 F. 918; Smith v. U. S. Shipping Board, etc. (D. C.) 2 F. (2d) 390.

We must also decide against the contention that, if the Fleet Corporation is liable there was an exclusive remedy under the Suits in Admiralty Act, March 9, 1920 (41 St. 525; Comp. St. Ann. Supp. 1923, §1251¼ et seq.). In Blamberg Bros. v. United States, 260 U. S. 452, 43 S. Ct. 179, 67 L. Ed. 346, it was held that under the Suits in Admiralty Act, which provides that, in view of the provisions for libel in personam, no vessel owned by the United States shall be subject to seizure by judical process in the United States, and that, in a case where, if such vessel were privately owned, a proceeding in admiralty could be maintained, a libel in personam may be brought against the United States, no libel can be maintained against the United States while the "vessel is not in a port of the United States or of one of her possessions." She Wan & Sons v. United States, 266 U. S. 108, 45 S. Ct. 45, 69 L. Ed. 192. The purpose of the suits in Admiralty Act as construed in the decisions referred to, is to substitute an action in personam for one of rem. In our case the ship, having been wrecked off the coast of a foreign country, and not having been in any port of the United States, at the time the libelants brought these suits,

and not having been at that time a merchant vessel, suit in rem could not have been brought under the Suits in Admiralty Act. The Cape Fear (D. C.) 8 F. (2d) 80; Atlantic Fruit Co. v. United States (D. C.) 8 F. (2d) 81; Markle v. United States (D. C.) 8 F. (2d) 87; Mack Engineering Co. v. United States (D. C.) 291 F. 713.

Appellants ask this court to apply the rule of laches. If respondents relied upon that defense, they should have pleaded accordingly. Green Star S. S. Co. v. Nan Yang Bros. Tobacco Co. (C. C. A.) 3 F. (2d) 369. However, it has been held in this circuit that a court of admiralty will, by analogy, follow the state statute of limitations. Pacific Coast S. S. Co. v. Bancroft Whitney, supra; Cresci v. Standard Fisheries (D. C.) 7 F. (2d) 378; Benedict on Admiralty, §554. Engel v. Davenport, 46 S. Ct. 410, 70 L. Ed.—, decided April 12, 1926, is not in conflict with our view.

The decrees are affirmed.

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In the Supreme Court
OF THE
United States

OCTOBER TERM 1927.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, *Petitioner,* vs. ROSENBERG BROTHERS & COMPANY.	No. 119
UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, *Petitioner,* vs. CALIFORNIA WINE ASSOCIATION.	No. 120
UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, *Petitioner,* vs. S. L. JONES & COMPANY.	No. 121

On Writs of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

PETITION FOR REHEARING.

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FARNHAM P. GRIFFITHS,
EDWIN S. PILLSBURY,
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March , 1928.

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The present opinion holds this right to be limited or withdrawn as to suits in admiralty on account of the Suits in Admiralty Act of 1920.

The opinion also holds that where a statute of limitations is pleaded in exceptions (or demurrer) to a libel, which are overruled, and the excepting party answers over without pleading the statute of limitations, he may yet rely upon the statute. This is contrary to the established rule of this court 2- 3

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This statute was set forth in exceptions to libels (demurrers) which were overruled. Petitioner filed answers which did not set up the statute of limitations. The exceptions (demurrers) formed no part of the record for they were waived by answering over. This court has considered the statute as properly pleaded, contrary to its prior decisions 3- 7

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This court has already held the main purpose of the Act was to exempt vessels of the government from arrest and seizure 9

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In the Supreme Court
OF THE
United States

October Term 1927.

United States Shipping Board Emergency Fleet Corporation, *Petitioner,* vs. Rosenberg Brothers & Company.	No. 119
United States Shipping Board Emergency Fleet Corporation, *Petitioner,* vs. California Wine Association.	No. 120
United States Shipping Board Emergency Fleet Corporation, *Petitioner,* vs. S. L. Jones & Company.	No. 121

On Writs of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

PETITION FOR REHEARING.

The opinion was filed herein February 20, 1928. Respondents respectfully petition for a rehearing.

In May, 1922, this court held *(Sloan Shipyards Corp. v. Fleet Corporation,* 258 U. S. 549) that the Fleet Corporation was expected to contract and to stand suit in its own person like any other private corporation. Pursuant to that decision two of these suits were filed in October, 1922, and the third in November, 1923, in the same manner in which they would have been filed against a private corporation.

In October, 1927, four months prior to its decision herein, this court, in *United States ex rel. Skinner & Eddy Corp. v. McCarl, Comptroller General,*.....U. S....., 72 L. Ed. 13, affirmed the *Sloan Shipyards* case, saying:

> "Being a private corporation the Fleet Corporation may be sued in the state or federal courts like other private corporations."

In the case at bar, this court holds that since the passage of the Suits in Admiralty Act, the Fleet Corporation is not suable in admiralty, like other private corporations, saying:

> "It follows that after the passage of the Act no libel in admiralty could be maintained against the United States or the corporations on such causes of action except in accordance with its provisions."

Thus, those suitors who relied upon the ruling in the *Sloan Shipyards* case, reiterated in the *Skinner & Eddy* case, and brought libels in admiralty against the Fleet Corporation invoking the general admiralty jurisdiction of the District Court, find themselves without remedy, whereas, apparently, had recourse been had to the law side of the same court or to the Court of Claims, relief might have been secured.

This harsh conclusion has been reached through holding (1) the Suits in Admiralty Act of 1920 to provide an exclusive remedy in admiralty against the Fleet Corporation, and (2) that in the instant case the statute of limitations pleaded by demurrer was not waived by the defendant by answering over after the demurrer was overruled, contrary to the established rule of this court.

It is with great deference to this court that we submit that its ruling is incorrect in both particulars.

We shall discuss the point concerning the statute of limitations first, because we believe that point alone must finally control the disposition of this case.

I.

THE STATUTE OF LIMITATIONS CONTAINED IN THE SUITS IN ADMIRALTY ACT WAS NOT PLEADED AND HENCE SHOULD BE DISREGARDED BY THIS COURT.

The opinion of the court disposes of this proposition in the following language:

> "And although, as the libelants point out, this was not 'pleaded in any of the answers', it was aptly and sufficiently pleaded in the exceptions to the libels, which correspond to demurrers in actions at law."

These exceptions or demurrers were overruled (R. 41, 727, 792). Thereafter answers were filed in each case (R. 41, 727, 792), which neither pleaded the limitation nor in any way reserved any rights under the exceptions. Thus the case is one where exceptions or demurrers have been overruled, and thereafter answers have been filed. In such case the filing of the answer constitutes a waiver of the demurrer and thereafter the demurrer is not properly part of the record.

If this rule of practice, repeatedly promulgated by this court, is changed by the present decision, we respectfully submit it will be desirable to set forth the reason for the change and to announce the new rule in definite terms.

The rule is thus stated in

Young v. Martin, 8 Wall. (75 U. S.) 354; 19 L. Ed. 418, 419.

"But, independent of this consideration, the ruling of the court on this point would not be noticed, for it appears that the plaintiffs, instead of relying upon the sufficiency of the alleged demurrer, filed a replication to the answer. They thus abandoned their demurrer, and it ceased to be a part of the record."

To the same effect see:

Ferguson v. Meredith, 68 U. S. (1 Wall.) 25, p. 42; 17 L. ed. 604, 609:

"When the plaintiff replied *de novo,* after a demurrer was sustained to his original replication, he waived any right he might have had, to question the correctness of the decision of the court on the demurrer."

Bell v. Mobile & Ohio R. Co., 71 U. S. 598; 18 L. Ed. 338, 339:

"There is great confusion in the record in relation to the disposition of the demurrers and pleas in abatement; but, as Bell filed a plea to the merits and the parties went to trial, all antecedent irregularities were waived."

Aurora v. West, 7 Wall. (74 U. S.) 82; 19 L. Ed. 42, 46:

"Pleading over to a declaration adjudged good on demurrer is a waiver of the demurrer; and when a

defendant files a rejoinder to a replication, previously adjudged good on demurrer, his act in pleading over must for the same reason be held to have the same effect."

Campbell v. Wilcox, 10 Wall. (77 U. S.) 421; 19 L. Ed. 973, 974:

"In the third place, the filing of a plea to the merits after the demurrer was overruled, operated as a waiver of the demurrer. The pleading was thus abandoned, and ceased thenceforth to be a part of the record. Clearwater v. Meredith, 1 Wall. 42, 17 L. ed. 609; Aurora v. West (ante, 42); Young v. Martin (ante, 418); Brown v. R. R. Co., 18 N. Y. 495."

Stanton v. Embrey, 93 U. S. 548; 23 L. Ed. 983, 984:

"Authorities are referred to by the defendant in error, which support the proposition that pleading over to a declaration adjudged good on demurrer is a waiver of the demurrer; and there are many other decided cases to the same effect. Aurora v. West, 7 Wall. 92; 19 L. ed. 46; Bell v. R. Co., 4 Wall. 602, 18 L. ed. 339; Clearwater v. Meredith, 1 Wall. 42, 17 L. ed. 609; U. S. v. Boyd, 5 How. 51; Evans v. Gee, 11 Pet. 85; Jones v. Thompson, 6 Hill. 621."

Evans v. Gee, 11 Pet. 80, 85; 9 L. Ed. 639, 641:

"The counsel for the plaintiff in error also contended for the reversal of the judgment, on the ground of sundry irregularities in the progress of the cause in the court below, apparent on the record. Such as that a general demurrer had been filed, and had not been disposed of; that a nonsuit had been taken by the plaintiff in error, and that a motion to set it aside had been overruled; that the case had been submitted to a jury without an issue between the parties; and, finally, that the verdict, if an issue was made, had been returned by eleven, instead of twelve jurors. These irregularities, whatever might have been their

> original imperfections, if not waived, were, in our opinion, waived by the defendant going to trial upon the merits, and cannot now constitute any objection upon the present writ of error. For a writ of error does not bring up for review any irregularities of this sort."

The learned author of the opinion in the instant case recognizes the existence of this rule, though he considers the propriety of the order overruling demurrers in

Fleischmann C. Co. v. United States, 270 U. S. 349; 70 L. Ed. 624, 630.

> "This brings us to the consideration of the questions arising on the pleadings as to which errors are assigned. We may assume for present purposes, without deciding, that the defendants did not waive their demurrers, by pleading over to the merits after they had been overruled. Compare, however, Young v. Martin, 8 Wall. 354, 357, 19 L. ed. 418, 419; Stanton v. Embrey, 93 U. S. 543, 553, 23 L. ed. 983, 984; Teal v. Walker, 111 U. S. 242, 246; 28 L. ed. 415, 417, 4 Sup. Ct. Rep. 420; Bauserman v. Blunt, 147 U. S. 647, 652, 37 L. ed. 316, 318, 13 Sup. Ct. Rep. 466; Nalle v. Oyster, 230 U. S. 165, 174, 57 L. ed. 1439, 1442, 33 Sup. Ct. Rep. 1043; Denver v. Home Sav. Bank, 236 U. S. 101, 104, 59 L. ed. 485, 35 Sup. Ct. Rep. 265; Harper v. Cunningham, 8 App. D. C. 430, 434."

Nalle v. Oyster, 230 U. S. 165,

is not opposed to this view, as it depends upon Section 1553 of the Code of the District of Columbia.

Of course where the declaration fails to state a cause of action or the case is without the jurisdiction of the court, those points are not waived by pleading over after the overruling of the demurrer.

Teal v. Walker, 111 U. S. 242, 28 L. Ed. 415, 417.

It must be borne in mind that respondents' rights accrued prior to the passage of the Suits in Admiralty Act and at a time when without question they could have invoked the general admiralty jurisdiction of the district court.

Thus if the usual rules of pleading and practice are applied to this case, the statute of limitations cannot avail the petitioner, for it is not set forth in its answers, the only pleadings which may be here considered.

II.

THE STATUTES CONFERRING THE GENERAL ADMIRALTY JURISDICTION UPON THE DISTRICT COURTS HAVE NOT BEEN REPEALED BY IMPLICATION IN WHOLE OR IN PART BY THE SUITS IN ADMIRALTY ACT OF 1920.

It is not suggested that there is any express repeal. The question involved is whether there is an implied repeal. Ordinarily a remedy conferred by a later statute is held to be cumulative and not exclusive of one conferred by an earlier statute. The rule is stated as follows:

2 *Lewis' Sutherland Statutory Construction*, p. 1057.

> "Statutes affirmative of the right, and prescribing other than the usual remedies for its enforcement, or conferring cognizance of it upon other tribunals, not negativing the pre-existing remedies or jurisdiction, in their very nature are merely cumulative, and not exclusive."

So, in

Smithmeyer v. United States, 147 U. S. 342, 357-8, 37 L. Ed. 196, 200,

the rule is applied in the following language:

> "The Act of October 2, 1888, did not repeal, either expressly or by implication, the general jurisdictional Act of the Court of Claims, to the extent of this case. The purport of the Act of 1888 seems to have been to provide a method of adjusting the claim, if the claimants so desired, without a suit. The claimants had a right to the additional method, but they could also waive its benefit. The general jurisdiction of the Court of Claims and the additional method of adjustment can both of them well stand together. *De Groot v. United States*, 72 U. S., 5 Wall. 419, 432 (18:700, 703); *Gordon v. United States*, 74 U. S. 7 Wall. 188 (19:35); *Henderson's Tobacco*, 78 U. S. 11 Wall. 652 (20:235); *Shutte v. Thompson*, 82 U. S. 15 Wall. 151 (21:123); *Bechtel v. United States*, 101 U. S. 597 (25:1019); *Campbell v. United States*, 107 U. S. 407 (27:592); *Chew Heong v. United States*, 112 U. S. 536 (28:770); *United States v. Great Falls Mfg. Co.*, 112 U. S. 645 (28:846); *United States v. Harmon*, *ante*, 164."

This court has stated the rule as follows:

Frost v. Wenie, 157 U. S. 46, 58, 39 L. Ed. 614, 619.

> "And where two statutes cover, in whole or in part, the same matter, and are not absolutely irreconcilable, the duty of the court—no purpose to repeal being clearly expressed or indicated—is, if possible, to give effect to both. In other words, it must not be supposed that the legislature intended by a later statute to repeal a prior one on the same subject unless the last statute is so broad in its terms and so clear and explicit in its words as to show that it

was intended to cover the whole subject, and therefore, to displace the prior statute. McCool v. Smith, 66 U. S. 1 Black, 459, 468 (17:218, 221); United States v. Tynen, 78 U. S. 11 Wall. 88, 93 (20:153, 154); Red Rock v. Henry, 106 U. S. 596, 601 (27:251, 253); United States v. Three hundred and fifty-six Caddies of Tobacco, 78 U. S. 11 Wall. 652 (20:235); King v. Cornell, 106 U. S. 395, 396 (27:60)."

To the same effect, see: *McCool v. Smith,* 66 U. S. (1 Black) 459, 470, 17 L. Ed. 218, 222; *United States v. Tynen,* 78 U. S. (11 Wall.) 88, 20 L. Ed. 153, 154; *King v. Cornell,* 106 U. S. (16 Otto) 395, 396, 27 L. Ed. 60; *United States v. Auffmordt,* 122 U. S. 197, 208, 30 L. Ed. 1182, 1185; *Cope v. Cope,* 137 U. S. 682, 686, 34 L. Ed. 832, 833; *United States v. Healey,* 160 U. S. 136, 147, 40 L. Ed. 369, 373; *Ward v. Race Horse,* 163 U. S. 504, 511, 41 L. Ed. 244, 246, 247; *The Paquete Havana,* 175 U. S. 677, 685, 686, 44 L. Ed. 320, 323; *Chase v. United States,* 256 U. S. 1, 9, 65 L. Ed. 801, 807.

The Act clearly and expressly withdraws the pre-existing right *in rem.* Hence the expression of that withdrawal supports the idea that there was no withdrawal of other remedies.

This court has held that the main purpose of the Act was to exempt vessels of the United States from arrest and seizure. *Eastern Transportation Co. v. United States,* 272 U. S. 675, 689, decided January 3, 1927; *Blamberg Bros. v. United States,* 260 U. S. 452; *James Shewan & Sons, Inc., v. United States,* 266 U. S. 108; *Nahmeh v. United States,* 267 U. S. 122

We submit the Act cannot fairly be said to clearly supersede the prior jurisdiction of the admiralty court

in personal suits against the Fleet Corporation, for the lower courts have held to the contrary in the following cases: *Fleet Corporation v. Banque-Russo Asiatique-London,* 286 Fed. 918 (C. C. A.) (3d Cir. affirming 266 Fed. 897 and 281 Fed. 886); *Fidelity Trust Co. v. Fleet Corporation,* 15 Fed. (2d) 600; *Marshall Hall Grain Co. v. Fleet Corporation,* 14 Fed. (2d) 141; *Smith v. Fleet Corporation,* 2 Fed. (2d) 390 (the New York West Aleta Case); *Rosenberg Bros. & Co. v. Fleet Corporation* (instant cases below) 295 Fed. 372 (on exceptions to libels). 7 Fed. (2d) 893 (on merits), 12 Fed. (2d) 721 (affirmed on appeal).

There are no contrary decisions to our knowledge in the lower courts. The case is of first impression here.

In its opinion the court holds that the Suits in Admiralty Act of 1920 provides a complete and uniform system of remedy and from this deduces that by necessary implication the general admiralty jurisdiction conferred by earlier general statutes upon the district courts with regard to the Fleet Corporation has been withdrawn or narrowed. We submit, however, that the rule so invoked is improperly applied, because if there is a complete system of remedies installed, there must be some subject matter upon which it acts. This subject matter is, according to the opinion, the claims against the government or the Fleet Corporation arising out of the possession or operation of merchant vessels. If this is so, then the complete system of remedies so conferred would necessarily exclude not only suits *in admiralty* against the government or the Fleet Corporation, but such proceedings wherever brought. But

the court, in its opinion, expressly reserves the question whether other proceedings in courts of law or in the court of claims have been eliminated. If the reasoning of the opinion is to be accepted, the claims here in suit are to be held non-enforceable in these proceedings, we submit, not because they fall within the category of claims sought to be enforced in an admiralty court, but rather because they fall within the class of claims which constitute the subject matter of the complete system of remedy which the court in its opinion holds to have been established by the act. Hence, we respectfully submit that the court cannot logically in one line of the opinion say that a new and complete system of remedies has been installed and therefore that the particular remedy here invoked has failed, but rather either should reach the conclusion that the subject matter has been completely covered and hence that all remedies, including the one here invoked, have been so eliminated, or, on the other hand, must hold that no complete system of remedies has been installed, and accordingly that there is no repeal by necessary implication.

And where a general jurisdiction has been conferred, as here, upon the admiralty court, the rule is that the later statute giving the specific remedy does not supersede the earlier statute giving the general jurisdiction.

Thus in

Rosencrans v. United States, 165 U. S. 257,

the rule is expressed:

> "When there are statutes clearly defining the jurisdiction of the courts the force and effect of such pro-

> visions should not be disturbed by a mere implication flowing from subsequent legislation. In other words, where Congress has expressly legislated in respect to a given matter that express legislation must control in the absence of subsequent legislation equally express, and is not overthrown by any mere inferences or implications to be found in such subsequent legislation. Especially is this rule to control when it appears that Congress in some cases has made express provision for effecting a change."

In its opinion the court places some stress upon Section 13 of the Act, reading:

> "That the provisions of all other acts inconsistent herewith are hereby repealed,"

but we submit that this repealing clause is an express limitation upon the extent of the repeal; that is, it affects only those Acts necessarily inconsistent with the one under consideration. In other words, this clause adds nothing to the repealing force of the Act. This court so held in

> *United States v. Three Hundred and Fifty-six Caddies of Tobacco,* 78 U. S. (11 Wall.) 652, 655, 20 L. Ed. 235, 237-8,

saying:

> "The 125th section enacts 'that all acts and parts of acts inconsistent with the provisions of this act are hereby repealed.' This is an express limitation of the extent to which it was intended former acts should cease to be operative, namely, only so far as they are inconsistent with the new act. It is quite inadmissible to engraft upon this express declaration of legislative intent an implication of more extensive repeal."

> *Hess v. Reynolds,* 113 U. S. 73, 28 L. Ed. 927,

is to the same effect.

This court held in the *Sloan Shipyards* case that uniformity was not a very serious consideration and could not control the conclusion of the court from the statutes, saying (pp. 568-59):

> "It is suggested that there will be lack of uniformity if suits can be brought in state courts. This consideration cannot control our conclusion from the statutes. *But it is not very serious,* since such suits against this Corporation can be removed to the courts of the United States (Pacific R. Removal Cases, 115 U. S. 1, 29 L. ed. 319, 5 Sup. Ct. Rep. 1113), and afterwards are subject to review here (Creswill v. Grand Lodge, K. P., 225 U. S. 246, 258, 56 L. ed. 1074, 1078, 32 Sup. Ct. Rep. 822; Southern P. Co. v. Stewart, 245 U. S. 359, 562, 62 L. ed. 345, 472, 38 Sup. Ct. Rep. 130, 203.)"

This statement in the majority opinion written by Mr. Justice Holmes is criticized in the minority opinion written by the Chief Justice (258 U. S. 572), where he said:

> "Can Congress be supposed to have intended that these suits might be brought in forty-eight different states, and in courts of first instance of those states, with the lack of uniformity in the findings of fact and the conclusions of law likely to be encountered where trials are had by courts and by courts and juries in so many varying jurisdictions? Did it propose to allow the United States to be made liable in litigation anywhere or under any form of procedure without any regulation on its part to secure a reasonable limitation of its own as to the time within which such suits shall be brought?"

Thus in the *Sloan* case uniformity as to all of the remedies was urged by the minority of this court as a controlling consideration and definitely rejected by the ma-

jority, while in the instant case the court places its decision on the great importance of securing uniformity of remedy in admiralty alone against the government and the Fleet Corporation, leaving the question open as to whether uniformity has been secured as to other jurisdictions.

We submit, first, that uniformity of remedy in admiralty alone as against the government and the Fleet Corporation is not a major consideration, because actions at law may be brought in state courts or in the district court, and incongruity as to procedure and result is not eliminated; and, secondly, in the *Sloan* case this court has held that uniformity of remedy *as to all jurisdictions* is not a controlling consideration.

Respectfully submitted,

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March , 1928.

CERTIFICATE OF COUNSEL.

WE HEREBY CERTIFY that we are attorneys and of counsel for each of the respondents and petitioners in the above entitled causes and that the foregoing petition for rehearing is presented in good faith and not for delay.

Dated: San Francisco, California,
March 10, 1928.

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FILED
DEC 6 1927
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1927.

No. 119.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION,
Petitioner,

v.

ROSENBERG BROTHERS & COMPANY.

No. 120.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION,
Petitioner,

v.

CALIFORNIA WINE ASSOCIATION.

No. 121.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION,
Petitioner,

v.

S. L. JONES & COMPANY.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

PETITION AND BRIEF OF AMICUS CURIÆ.

JOHN C. PRIZER,
Amicus Curiæ.

The Evening Post Job Printing Office, Inc., 20 Vesey St., New York, N. Y.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1927

No. 119-121.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, Petitioner

v.

ROSENBERG BROTHERS & COMPANY

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, Petitioner

v.

CALIFORNIA WINE ASSOCIATION

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, Petitioner

v.

S. L. JONES & COMPANY

PETITION

TO THE HONORABLE THE SUPREME COURT OF THE UNITED STATES:

Your petitioner prays leave to file with this honorable Court the attached brief presented by petitioner as *amicus curiæ*.

Respectfully submitted,

JOHN C. PRIZER,
Petitioner.

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UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, Petitioner

v.

S. L. JONES & COMPANY

BRIEF OF *AMICUS CURIÆ*

Interest of Present *Amicus Curiæ.*

The writer of the present brief is a member of the firm of proctors representing the libelants against the Fleet Cor-

poration in the parallel suits brought in the United States District Court for the Southern District of New York by Jacob Telfair Smith and Catz American Shipping Co., Inc., to recover damages for the loss of other cargo shipped on the "West Aleta" upon the voyage involved in the instant cases.

Our cases were tried prior to the trial in the instant cases. On July 10, 1924, Judge A. N. Hand, then District Judge of the Southern District of New York, handed down his opinion in favor of our libelants. On July 31, 1924, interlocutory decrees were entered. Owing, however, to the difficulty encountered in obtaining complete proof of damages, final decrees were not entered until January 29, 1926, when they were entered in the amounts of $149,449.45 in the *Smith* case and $40,381.58 in the *Catz* case.

In the instant cases damages were stipulated before trial and consequently final decrees were entered straightway upon the decision of the District Court upon the merits, on September 24, 1925. The District Court reached the same conclusion that Judge Hand had reached in our cases. An appeal in the present cases was promptly taken to the Ninth Circuit Court of Appeals where the decrees of the District Court were affirmed on May 10, 1926. Re-hearings were subsequently denied.

In our cases an appeal was taken to the Second Circuit Court of Appeals, but before the cases were reached for argument the instant case had been decided by the Ninth Circuit Court of Appeals, and this Court had granted its writ of certiorari. The Second Circuit Court of Appeals therefore postponed consideration of our cases pending the decision of this Court upon the instant cases.

Scope of this Brief.

It is not the purpose of this brief to discuss the points upon which the writer, as proctor in the New York cases, is not interested.

1. Our cases were brought in sufficient time to comply with the requirements of the Suits in Admiralty Act of March 9, 1920. We are therefore not interested in the question of the exclusiveness of the remedies under that Act, except as such question may affect the right to maintain the six per cent. interest allowed in the New York cases. We concur, however, with all of the views expressed in the brief for the respondents.

2. In our cases the shippers of the cargo had no shipments by the "West Aleta" for Hamburg.

3. In the larger of our cases the shipment was made from Seattle, where the vessel was not advertised for Hamburg at all until the day before sailing, when she was advertised "for Cardiff, Rotterdam, Hamburg." Thus while we deem that the parol evidence rule excludes the consideration of newspaper advertisements, we will not devote attention primarily to the subject.

4. Neither shipper in our cases maintained a place of business at Seattle or San Francisco and, therefore, we are not concerned with the information, if any, which may have been obtainable at San Francisco regarding the intention of the Fleet Corporation to send the "West Aleta" to the distant and dangerous port of Hamburg before allowing her to stop at Cardiff and Rotterdam.

We wish only to deal with some of petitioner's contentions upon the general subject of deviation which are necessarily involved in our cases as well as in the instant cases.

POINT I.

The definition of the voyage is a fundamental term of the contract of carriage set out in the bill of lading.

The petitioner in its brief says:

> "Clearly, the voyage of a ship is not to be determined by reference to a single bill of lading" (Petitioner's Brief, p. 26).

And again:

> "True, no provision of the written instrument may be varied by reference to the original offer, but the contract does not, and does not profess to, indicate either the scope or the route of the voyage" (Petitioner's Brief, p. 26).

Can the petitioner mean to contend that the bill of lading under which a particular shipper freights his merchandise does not constitute a complete contract between the shipper and the carrier? Were such a contention to be accepted, the terms of the contract would seem to be open to a great variety of parol evidence, and the written contract itself would be of little value. Furthermore, there would be no need of inserting in the bill of lading any deviation clause whatever, since the voyage would be determinable by extraneous circumstances.

The first and most important consideration to the shipper is that the carrier shall bind itself to carry his goods from the port of shipment to the desired port of destination; and, in order to permit the merchant to make his business arrangements, and in order to enable the insurer to determine what rate of insurance premium shall be exacted, the bill of lading must specify by what route, if other than the usual and direct route, the goods are to be carried.

As said by Lord Esher, *M. R.*, in the case of *Leduc* v. *Ward*, 20 Q. B. D. 475:

> "To suppose that there is no contract for a particular voyage in the bill of lading seems to me to be to disregard the whole course of mercantile business. It is obviously a most important part of the contract of carriage by sea that the route by which the goods are to be brought should be determined; and accordingly it seems to me to be provided for in the bill of lading. The ordinary form of bill of lading states that the goods are shipped on such a ship lying in the port of shipment and bound for the port of destination *and if the ship is to go to other places between those ports the names of them are inserted.* Those terms appear to me to describe a voyage, * * *" (20 Q. B. D. 480).*

Likewise in the other leading English case of *Margetson* v. *Glynn* (1892), 1 Q. B. 337; (1893) 1 A. C. 351, Lord Esher, in the Court of Appeals, said:

> "A bill of lading is a contract for the carriage of goods on a ship, and the first thing which the shipper and shipowner must agree upon is the voyage" (p. 339).

We had supposed the principle to be well settled both in this country and in England that parol evidence is inadmissible to vary the terms of a bill of lading.

St. Johns Corporation v. *Companhia Geral, etc.*, 263 U. S. 119;
The Sidonian, 34 Fed. 805;
Leduc v. *Ward*, 20 Q. B. D. 475.

It seems surprising to us that the petitioner should concede the inadmissibility of parol evidence to prove an express agreement between the shipper and the carrier contrary to the terms of the bill of lading, but should contend that the bill of lading is controlled by other extraneous evidence which might or might not have come to the attention of the shipper, such as the terms of bills of lading issued to other shippers and

* The Italics in this brief are ours.

advertising matter published in various newspapers. If the terms of the contract of carriage could be contradicted or supplemented by such evidence, how would the shipper ever know when and to what extent he might rely upon the terms of his express contract?

There is much more reason for applying the parol evidence rule strictly to bills of lading than to ordinary commercial contracts. The bill of lading is a negotiable document which is designed to pass both the benefit of the contract and the ownership in the goods while the latter are in transit, and frequently, as in one of our New York cases, passes to several endorsees before the arrival of the goods. Even when the bill of lading is not negotiated, it frequently is obtained, as in our other New York case, on behalf of a distant consignor and a more distant consignee. It would make commercial transactions difficult indeed if the persons receiving the bill of lading and their underwriters could not rely upon the document itself as embodying the correct and complete terms of the contract of carriage.

The principal and almost the only expressed obligation of the carrier under the present bills of lading was that expressed in the clause containing the restricted right of deviation. The controlling words of the clause describing the voyage and the duty of the carrier to transport the cargo are:

> "Received in apparent good order and condition * * * at San Francisco, California, * * * to be transported by the ship 'West Aleta' * * * unto the port of Cardiff (Rotterdam) * * * and there delivered in like apparent good order and condition" etc.

Almost every other clause in the bill of lading is inserted for the benefit of the carrier.

POINT II.

The deviation clause is construed with respect to and limited by the bill of lading voyage.

The very syntax of the deviation clause in the bills of lading shows that the clause is incidental to and limited by the bill of lading voyage, to wit, the voyage between the specified ports of shipment and destination.

As said by one of the Court in *Margetson* v. *Glynn* (1892), 1 Q. B. 337, at 340:

> "When you are describing a voyage and you add with regard to that voyage liberty to do something, would it be a reasonable construction to say, it meant that you may go on an absolutely different voyage?"

The Second Circuit Court of Appeals in the case of *The Panola*, 9 Fed. (2d) 733, at page 745, quoted with approval the following statement in *Scrutton* on *Charter Parties* (11th Ed.) Note pages 283-4:

> "All these clauses must be construed in the light of the commercial adventure undertaken by the shipowner. Thus, a clause giving leave 'to call at ports' will only allow a shipowner to call at ports which will be passed in the ordinary course of the named voyage in their geographical order; the words 'in any order' will allow the shipowner to depart from geographic order; but, even when there are general words giving liberty to call at ports outside the geographic voyage, these will be cut down by the special description of the voyage undertaken to ports in the course of that voyage."

Joyce in his work on the *Law of Marine Insurance* states:

> "A liberty of ports is always governed by the principle that the vessel in visiting a port or ports must be confined to those properly in the course of the voyage described *and embraced in the termini specified,* as well also as for

purposes connected with the objects of the voyage, and however general the liberty given may be as to its terms, it does not authorize changing the voyage."

Joyce on Insurance (2nd ed.) Sec. 2396.

The petitioner in its brief contends:

"The liberties clause should be construed to give greater freedom of choice of route in such a service—that is from a range of ports to another range of ports—than in a service from one port of loading to one port of discharge" (Petitioner's Brief, p. 27).

In the absence of a recognized and binding custom, the range of ports referred to by petitioner must be taken to mean such ports as the shipowner upon the particular occasion chooses to send his vessel to. How were the shippers on the "West Aleta"—and how were subsequent assignees of their bills of lading—to know on what voyage the "West Aleta" was bound if the petitioner could send her via any ports which it might wish to bring within the so-called range of her service?

There can be no doubt under the rule of law heretofore applied both in the courts of England and of this country to such a deviation clause that the ports of call are restricted to ports lying upon some route which can be said to constitute in a business sense a route between San Francisco and Cardiff (Rotterdam). Under no circumstances can the leave "to touch at any ports in any rotation or order in or out of the customary route * * * unto the port of Cardiff" authorize the vessel to pass some 800 miles directly beyond the terminus of the voyage with the necessity of subsequently retracing her course an equal distance to the specified port of destination.

If the Fleet Corporation, when receiving Cardiff and Rotterdam cargo for the "West Aleta" had been willing to accept it only upon the condition that the vessel should first proceed past those ports and on to the highly hazardous port of Hamburg and then retrace her steps before making

delivery, it should have specified clearly that the voyage would be made "via Hamburg", and should have inserted those words or words equally clear in the bills of lading. The shippers would then have had an opportunity to accept or reject the contract of affreightment on those terms, and the insurers of the cargo would have had an opportunity to charge a rate suitable to the extended voyage and the exceptional peril of the double passage through the mine areas, or to reject the risk altogether if they did not wish to extend their "line" on cargoes exposed to that exceptional peril. Likewise all assignees of the bills of lading would have been apprised of the greater and different dangers to which the goods were exposed.

POINT III.

The exceptional perils attendant upon the voyage to Hamburg would have rendered the call at Hamburg inadmissible even if the bills of lading had given an express right of deviation by going beyond the terminus of the voyage.

Even an express right to carry goods beyond the port of destination and subsequently bring them back again for discharge cannot be exercised unreasonably.

W. T. Sargent & Son v. *East Asiatic Co.*, 21 Comm. Cases 344 (1915).

A mere glance at the United States Government mine chart in evidence shows the exceptional peril attendant upon a voyage to Hamburg as compared with the voyage to Cardiff or Rotterdam. There was not only the direct danger of collision with the unswept mines, but the consequent greatly increased difficulties of navigation which were in fact directly

responsible for the loss of the "West Aleta" and her cargo. Before the cargo of the shippers could lawfully have been subjected to this extraordinary peril, they should have been given express notice so that they or their prospective insurers could have declined to accept the risk had they wished to do so.

CONCLUSION.

It is respectfully submitted that the decrees of the Circuit Court of Appeals should be affirmed.

JOHN C. PRIZER,
Amicus Curiæ.

Ltd.